

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SRI G.D. AGARWAL, HON'BLE VICE PRESIDENT
SRI C.M.GARG, JUDICIAL MEMBER**

ITA No.1776 & 1777/Del./2011

(Asstt. Year : 2003-04)

(Asstt. Year : 2004-05)

Satlej Industries Ltd. (Now known as SIL Investments Ltd.) Bhawanimandi, Distt. Jhalanwar Rajasthan	Vs	DCIT Circle -8(1), Room No. 163, First Floor, C.R. Building, I.P.Estate New Delhi
(APPELLANT)		(RESPONDENT)
PAN : AABCS2899H)		

Assessee by : Sh. Rohit Jain, Adv., Sh. Sambhav Jain, C.A.

Revenue by : Sh. Anima Barnwal, Sr. DR

Date of Hearing : 12.01.2016

Date of Pronouncement :24. 02.2016

ORDER

PER C.M.Garg, J.M.

These appeals have been filed against the orders of the CIT(A)-XII, New Delhi passed in first appeals no. 52 and 157/06-07 for AY 2003-04 and 2004-05 respectively both dated 24.01.2011.

**Application of the assessee for admission of additional ground under
Rule 11 of Income Tax Appellate Tribunal, Rules 1963**

2. We have heard the argument of both the sides on carefully perused the record before us the Id. Counsel of the assessee submitted that in both the appeals. The assessee requested for admission of additional ground of appeal. The Id. Counsel further contended that the assessing officer vide assessment order did not allow the reduction in respect of export profits allowable while computing book profits in terms of clause (IV) of explanation I to section 115JB of the Act. The Id. Counsel further submitted that the AO also restricted the allowable reduction u/s 115JB of the Act to the extent of the limits specified in sub section 1B of section 80HHC of the Act, without appreciating that such limits are not applicable for computing book profits. The Id. Counsel further pointed out that on the said basis the assessing officer observe that while computing book profits deduction of export profits was to be restricted 50 % of the eligible profits as per sub section (IB) of section 80HHC of the Act which is contrary to the scheme of computing book profits u/s 115JB of the Act. The Ld. Counsel submitted that additional grounds were raised before the CIT(A) but on account of inadvertence not taken in the memorandum of appeal filed before the Tribunal. The Id. Counsel placing reliance on the decision of Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT 229 ITR 383(SC) submitted that additional grounds raised on the basis of decision of Hon'ble Supreme Court in the case of Ajanta Farma Ltd. vs. CIT 327 ITR 305 (SC) which goes to the root of the controversy, therefore, additional ground may kindly be admitted for adjudication.

3. The Id. DR strongly opposed to the admission of additional grounds and contended that when the grounds were not raised before the tribunal in form no. 36 then the same cannot be raised subsequently for filling the gaps in the appeal of the assessee. However, he fairly accepted these issues were raised before the CIT(A) in the first appeal for both the years.

4. On careful consideration of above rival submissions of both the sides from copy of the form no. 35 available on record in both the appeals it is apparent that the assessee challenged this legal issue before the CIT(A) but the same were not submitted while filing these appeals before the Tribunal. However, in the humble opinion since the legal issues raised by the assessee by way of proposed additional grounds goes to the root of the controversy being legal. Therefore, respectfully following the preposition laid down by Hon'ble apex court in the case of NTPC vs. CIT (Supra) additional grounds proposed by the assessee in both the appeals are admitted for adjudication. Finally, applications of the assessee in both the appeals for admission of additional grounds are allowed.

5. Both the admission of additional grounds as are allowed which read as under :

"1. That on the facts and circumstances of the case and in law the assessing officer erred in not allowing reduction of 100% export profits allowable while computing 'book profits' in terms of clause (iv) of Explanation 1 to section 115JB of the Income Tax Act, 1961('the Act').

1.1 That the assessing officer failed to appreciate that the entire export profits is allowable as deduction while computing 'book profits' under section 115JB and the same is not required to be restricted to the extent specified in sub-section (1B) of the section 80HHC of the Act."

6. From appeal records we note that the assessee has raised similarly worded grounds in both the appeals and except amounts mentioned therein grounds are the same. For sake of completeness, the grounds of appeal raised by the assessee in ITA no. 1776.Del.2011 for AY 2003-04 are being reproduced below :-

“1. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in denying benefit of deduction under section 80HHC of the Income Tax Act, 1961 (‘the Act’) amounting to Rs. 2,89,79,156/- by excluding gross amount received on transfer of DEPB credits from eligible profits, in view of the amendment brought about by the Taxation Laws (Amendment) Act, 2005.

1.1. That the CIT(A) erred on facts and in law in reducing the entire amount of DEPB benefit from the profits of the business, without appreciating that only profit on transfer of DEPB credits ought to be excluded in terms of proviso to sub-section (3) of section 80HHC read with section 28(iiid) of the Act.

2. That the CIT(A) erred on facts and in law, in enhancing the income of the appellant by directing the assessing officer to recompute the ‘book profits’ under section 115JB of the Act by adding:

(a) the amount transferred from reserves on accounts of deferred Government subsidy amounting to Rs. 21,41,540/-;

(b) the amount relating to provision against transit claim of Rs. 5,13,071/- and provision against refund of insurance premium of Rs. 13,101/-.

3. That the CIT(A) erred on facts and in law in not allowing reduction of amount of Rs. 21,41,540/- transferred from reserves on account of deferred Government subsidy, to the credit of profit and loss account, while computing ‘book profit’ under section 115JB of the Act.

4. That the CIT(A) erred on facts and in law in adding back provision against transit claim of Rs. 5,13,071/- and provision against refund of insurance premium of Rs. 13,101/-, debited to the profit and loss account, while computing ‘book profits’ under section 115JB of the Act.”

Grounds of appeals no. 1 and 1.1 and additional grounds of appeal :

7. We have heard arguments of both the sides and carefully perused the relevant material placed on record before us. The Id. Counsel of the assessee submitted that the assessing officer erred in denying the deduction under 80HHC of the Act on the amounts relatable to DEPB credit, in view of the decisions of Hon’ble Supreme Court in the case of CIT vs. Avani Exports 232

Taxman 357 and in the case of Topman Export vs. CIT 342 ITR 49(SC). The Id. Counsel further elaborated that as a consequence to the decision of Supreme Court in the case of Avani Exports(Supra) 3rd & 4th proviso inserted in the year 2005 to section 80HHC would not be applicable to AY 2003-04 and 2004-05. Therefore, assessing officer erred in denying deduction u/s 80HHC of the Act by applying the said proviso. The Id. Counsel further submitted that as a consequence of the decision of Hon'ble Supreme Court in the case of Topman Export vs. CIT (Supra) profit, if any, on transfer of DEPB credits gets excluded from the "profit of the business" for the purpose of computing deduction u/s 80HHC of the Act, thus, the assessee would be eligible for deduction u/s 80HHC of the Act on entire amount of DEPB credit.

8. The Id. Counsel further submitted that the aforesaid decision of Hon'ble Supreme Court in the cases of Avani Export (supra) and Topman Exports (supra) are squarely applicable in the present case of the assessee and therefore, then the appellant should be held eligible for deduction u/s 80HHC of the Act on entire profits including the gross face value of DEPB credit and the AO may be directed to recomputed deduction u/s 80HHC of the Act by including the gross face value of DEPB credit, as has been held by Hon'ble Apex Court. The Id. Counsel further submitted that deduction u/s 80HHC of the Act we directed to be allowed to the assessee at both the stages i.e. computing the income under normal provisions as well as while computing the book profits u/s 115JB if the Act.

9. Regarding additional grounds raised by assessee, the Id. Counsel pointed out that these are connected with ground no. 1 and relate to manner/computation of amount to be allowed as reduction u/s 80HHC of the Act while computing book profits and also to the manner while computing and also manner book profits u/s 115JB of the Act. The Id. Counsel of the

assessee finally submitted that the AO may kindly be directed to recomputed the book profit in the light of decisions of Hon'ble Supreme Court in the case of Ajanta Pharma (Supra), and Topman Exports (Supra) and Avani Export (Supra) u/s 115JB of the Act with reference to the adjusted book profits as held by the Supreme Court in the case of CIT vs. Bahari Information Technology System Pvt. Ltd. reported as 340 ITR 593 (SC) and the AO may also kindly be directed to allow reduction of 100% export profits as computed u/s 80HHC of the Act.

10. Replying to the above the Id. Departmental Representative (DR) strongly supported the action of the AO as well as the impugned order of the CIT(A). However, he fairly submitted that the department has no serious objection if ground no. 1 and 1.1 and additional grounds of the assessee are restore to the file of AO for afresh adjudication in the light of relevant decisions of Hon'ble Supreme Court(Supra) which were not in-existence at the time of passing the impugned assessment order.

11. On careful consideration of above submission of both the sides, from the relevant assessment orders we note that the assessment order for AY 2003-04 was passed on 29.3.2006 and the assessment order for AY 2004-05 was passed on 26.12.2006 and much water has been flown from these dates to till date. We respectfully note that the controversy in regard to computation of book profits u/s 80HHC of the Act and u/s 115JB of the Act has been settled by Hon'ble Apex Court by the land marked decision in the case of Ajanta Farma (Supra), Avani Exports (Supra) and Topman Exports (Supra). Therefore, we find it appropriate to restore these grounds to the file of AO for afresh adjudication after considering the dicta of Hon'ble Apex Court in the aforesaid decisions and other relevant decisions and as per provisions of the Act. Therefore, ground no. 1 and 1.1 along with additional grounds of

the assessee in both the appeals are restored to the file of AO for afresh adjudication after affording due opportunity of hearing for the assessee and without being prejudiced from the earlier assessment and impugned orders for both the years.

12. Accordingly, these grounds of the assessee are deemed to be allowed for statistical purposes.

Grounds no. 2, 3 & 4 of the assessee in AY 2003-04 :

Apropose these grounds we have heard arguments of both the sides and carefully perused the relevant materials placed on record before us. The Ld. Counsel of the assessee, intended that the CIT(A) wrongly took an action of enhancing and directing the AO to recomputed book profits u/s 115JB of the Act by directing certain upward adjustments. The Ld. Counsel also pointed out without prejudice to ground no.2 that the CIT(A) also erred in directing the AO to not allow reduction of Rs. 21,41,540/- transferred from deferred Govt. subsidy Reserve A/c to the P& L Account, while computing book profits u/s 115JB of the Act. Regarding ground no. 4 the Ld. Counsel also pointed out that CIT(A) incorrectly directed the AO to make upward adjustment of provision against transit claim of Rs. 5,13,071/- and provision against transit claim of Rs. 5,13,071/- and provision of insurance premium of Rs. 13,101/- while computing book profits u/s 115JB of the Act. The Ld. Counsel prayed that if the main issue of denial of deduction claimed u/s 80HHC of the Act at both the occasions i.e. while computing income under normal provisions and while computing deemed income u/s 115JB of the Act is restored to the file of the AO then the ground no. 2,3& 4 being related to and consequential to main issue may also be restored to the file of the AO for afresh adjudication along with the main issue.

13. The Id. DR strongly supported the action of the authorities below and contended that the AO was quite justified in denying benefit of section 80HHC of the Act and in calculating deemed income u/s 115JB of the Act. The Ld. DR also supported the action of the AO as well as of the CIT(A) in enhancing and upholding the conclusion of the AO pertaining to grounds no. 2, 3 & 4. However, he fairly submitted that if it is found just and proper to restore these issues to the file of the AO for adjudication with the main issue, then department has no serious objection to that.

14. On careful consideration of above submissions, we are of the view that since by the earlier part of this order we have restored of main issue to the file of the AO for a fresh adjudication hence, we also find it appropriate to restore these issues to the file of the AO in the similar line. Thus, grounds no. 2, 3 & 4 being related to main issue of computation of profits under normal provisions as well in regard to deemed income u/s 115JB of the Act are restored to the file of the AO for afresh adjudication after affording due opportunity of hearing to the assessee. Consequently, ground nos. 2, 3 & 4 are deemed to be allowed for statistical purposes.

Ground nos. 2 & 3 in 1771/Del./2011 for AY 2004-05 :

15. Both parties agreed that facts and circumstances in regard to ground no. 2 & 3 for AY 2004-05 are similar to earlier AY 2003-04 hence, our conclusion for AY 2003-04 would apply *mutatis mutandis* ground nos. 2 & 3 of the assessee for AY 2004-05 and thus same are also restored to the file of the AO for afresh adjudication along with main ground of the assessee.

Ground no. 4 for AY 2004-05 :

16. Apropos this ground the Id. Counsel of the assessee submitted that the CIT(A) also erred in directing the AO to complete the amount of disallowance u/s 14A of the Act, while computing book profits under section 115JB of the

Act, without appreciating that no expenses had, in fact, been incurred by the assessee for earning exempt income. The Ld. Counsel submitted that this issue may also be restored to the file of the AO for afresh adjudication along with main issue. The DR reiterating his submission made and noted by towards ground no. 2 & 3 and also did not seriously object to the restoration of this issue to the file of the AO in the similar line.

17. On careful consideration of above submissions, we are of the view that since, we have restored main issue to the file of the AO then controversy regarding ground no. 4 for AY 2004-05 being related to main issue of computation of book profits u/s 115JB of the Act also deserves to be restored to the file of the AO for afresh consideration and we restore the same to the file of the AO for re adjudication along with main ground of the assessee. Accordingly, ground no. 4 of the assessee for AY 2004-05 is also deemed to be allowed for statistical purposes.

18. In the result, both the appeals of the assessee are deemed to be allowed for statistical purposes with the directions as noted above.

Order Pronounced in the Court on 24 /02/2016.

Sd/-
(G.D.Agarwal)
VICE PRESIDENT

sd/-
(C.M.Garg)
JUDICIAL MEMBER

Dated: 24 / 02/2016

Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

		Date	<u>Initial</u>	
1.	Draft dictated on	12.02.2016		
2.	Draft placed before author	12.02.2016		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			