

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No. 145/Del /2015
[Assessment Year: 2007-08]

The I.T.O
Ward 21(1)
New Delhi

Vs. M/s Rajast Deep Overseas P. Ltd
179 A, LIG Flats, Rajouri Garden
New Delhi

[Appellant]

PAN : AAMPK 0195 Q
[Respondent]

Department by : Shri Kartar Singh, CIT-DR
Assessee by : Shri Ved Jain, CA
Shri Ashish Chopra, CA

Date of Hearing : 10.03.2016
Date of Pronouncement : 11.03.2016

ORDER

PER LALIET KUMAR, JM:-

This appeal filed by the Revenue is directed against the order of the ld. CIT(A)-XVIII, New Delhi dated 30.10.2014 pertaining to A.Y 2007-08.

2. The solitary ground raised in this appeal read as under:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to allow deduction

u.s 80IC of the I.T. Act, 1961 on market brand value, market value of services and profit attributable to branches.

3. At the time of hearing, at the very outset, it was conveyed to us that the issue raised in this appeal regarding allowing of deduction u/s 80IC of the Income-tax Act, 1961 ['the Act' for short] stands covered in favour of the assessee by the Tribunal order dated 12.02.2015 passed in assessee's own case for Assessment years 2008-09 in ITA Nos. 3235/Del/2012 & 2309/Del/2012 and others, wherein the Tribunal upheld the ld. CIT(A)'s finding in deleting the addition by relying on its own decision passed in assessee's own case for A.Y 2008-09, whose copies are enclosed. The ld. counsel for the department fairly admitted that the issue is covered in favour of the assessee. But he relied on the findings of the A.O. given in this regard.

4. We have heard the ld. counsel for the department and have also gone through the Tribunal order in assessee's own case [supra] and have also carefully treaded through the

appellate order as well as the decision of the Hon'ble High Court.

5. We find that against the order passed by the AO, the assessee was in appeal and the Id. CIT(A) has allowed the appeal of the assessee on the following reasoning:

“Sub-clause 8 & 10 of section-801 A are in itself clear to mention that adjustments has to be made only in case transactions made with other business / branches / concerns are not made at market price. In this case the^{re} was no transaction of sale / purchase with branch / head office or other business concern, hence the provision of sub-clause 8 and 10 of section-801A is not applicable. The A.O. has mentioned that the assessee has not enclosed the copy of vat return filed, hence expenses on account of salary and wages is most appropriate measure to ascertain the extent of contribution of any particular place and applied his own. Presumptive base that since 23% of the salary and wages pertains to haridwar hence 23% of the profit will be pertaining to haridwar and rest from others, which is wrong and void and against the provisions of law. On the merit of the case sec-80IC provides that where the gross total income of assessee includes any profit or gains derived by an undertaking from any business referred to in subsection 2. Subsection 2 provides that this section applies to any undertaking or enterprises which has begun or begins to

manufacture or produce any article or thing not being an article or thing specified in the xiii schedule in the notified area, hence the prime condition of the sec-80IC is that the industrial undertaking should manufacture or produce the goods in the notified area, there is no restriction that the industrial undertaking should carry on all the activities including sale, purchase after sale service, administration etc. on exclusive basis from notified area, it means the manufacturing should be taken place from the notified area only on exclusive basis but the other activities like sales, purchase, administration etc. can be carried from branch, head office, depo etc. Although in the present case entire sale /purchase was made from the industrial undertaking at Haridwar only and the role of head office at Delhi and branches at Mumbai, Kolkata and Bangalore etc. was only to promote the sales & provide after sale services.

The Ld. A.O. has not brought on record any fact to rebut the contention of the appellant. They have just mentioned that apart from manufacturing, all other activities are being carried out at places other than place of undertaking which is evident from the figures of employees remuneration & benefit expenses wherein the head office salary / expenses are 750000/- and the salary & wages for the works is Rs. 225099/- similarly is the case of sundry debtors & creditors. There is no vehicle, generator or computer at Haridwar which are reflected in head office at Delhi and in other words 77% of the expenses debited to p&l a/c have been incurred at place other than Haridwar, which is the evidence that most the income earning activities resulting in profit to the assessee is being carried out from places other than

the eligible unit. We would like to mention here that all the expenses of head office at delhi and branches are booked in the books of head office at delhi and the expenses directly incurred at haridwar are booked in books of haridwar. there is no prohibition in. The Indian accounting standards to book the expenses of head office / branches either in the respective books or books maintained at the registered office. The company could have account for all the expenses in the books of haridwar also as the expenses of the branches and head office were directly related to the business earned on from the Haridwar. We have already mentioned earlier that the expenses at the branches were in the nature of salary & business promotion expenses paid to staff engaged in the business of providing sales promotion and after sales services to the products manufactured & sold from Haridwar only. Similarly expenses at the head office at Delhi were in the nature of directors remuneration, audit fees, rent and administration charges, loans & advances were availed from Delhi Branch (Though secured against equitable mortgage of factory & building at Haridwar). Hence were booked in head office ' books. For the purpose of the control & smooth running of the business sub limit was availed at canara bank Haridwar.

There was no debtors / creditors in Delhi & all were reflected in the books of Haridwar only. All that duties & taxes were paid from works at Haridwar hence the contention of the ao. that since the entire expenses are not accounted for in the books of Haridwar hence the entire income earning activities resulting in profit to the assessee will also not be presumed to be carried

form works at Haridwar is wrong and against the provisions of law. In the present global market restricting the business activities to a limited area is against the market strategy. Tata, bilra, ambanis and all other major business concerns have branches, depots, distribution arrangements so as to sale their products in the entire india & abroad which does not mean that their products have not been manufactured at their works or the profit has not been generated from the manufacturing activity. In the case of CIT vs. V.C.Prakash & co. (India) p ltd. (1956) 29 ITR 661 SC has already held that where an assessee carries on the same business at a number of places, There is for the purpose of sec-28 only one business.

The Ld. A.O. has also taken the base of the salary as base of earning profit, they have held that since 23% of the total expenditure on salary & wages are incurred at industrial undertaking hence 13% of the profit is only for the industrial activity and the balance profit is not from eligible undertaking, if it was not income from this business then it was the duty of the A.O. to prove then what was the source of the income earned from any other activity, the ball was in the court of the A.O. to prove his contention which he has not brought on record any material fact to justify his contention except to apply his presumptions & assumptions, presumptions & assumptions cannot be a base to reject the claim of deductions, statutory allowable to the appellant and to reject the same, the AO is duty bound to bring on record the documentary evidence.

Moreover, while passing the order on the appeal of the assessee on the similar issue in the A.Y 2008-09, your honour has deleted the such addition mentioning that since the Co. has prepared consolidate financial statement in which the expenses incurred by all the unit and head office have been reduced from the total eligible profit for claiming deduction u/s 801C, hence, the decision of the AO on this ground is not sustained. The honorable ITAT has also confirmed the action of than CIT (A) on this ground.’’

The appellant has relied on the judgement of Hon’ble Income Tax Appellate Tribunal in appellant’s own case for Assessment Year 2008-09 wherein Hon’ble Income Tax Appellate Tribunal vide order dated 10/1/2014 has decided the issue by observing as under:-

“The provisions of section 80 1C have been introduced by legislature to promote the industrial activity and their profitability. Merely because the industrial undertaking earned higher profit does not call for an interference that claim of deduction is to be wily nily reduced on presumptions. In consideration of entirety of facts and circumstances we see no justification in CIT (A)'s order retaining the reduction of 10% from the deduction, same is deleted. Revenues ground is dismissed and that of assessee is upheld on this issue.”

6. After considering the findings of the ld. CIT(A), we have clearly noticed that the issue raised in this appeal stands fully covered by the order of the Tribunal dated 12.02.2015 wherein the Tribunal has held that merely because the industrial undertaking earned higher profits does not call for an inference that claim of deduction is to be wily nily reduced on presumption. The Tribunal also held that the provisions of section 80IC of the Income-tax Act, 1961 ['the Act' for short] have been introduced by Legislature to promote the industrial activity and their profitability. The Hon'ble Jurisdictional High Court of Delhi has upheld the order of the Tribunal for A.Y 2009-10 vide order dated 20.10.2015 in ITA No. 540/Del/2015 whose copy is enclosed. Therefore, it is vividly clear from the above that the issue stands covered in favour of the assessee by the decision of the Hon'ble High Court of Delhi and ITAT. Hence there is no merit in this ground taken by the Revenue. Accordingly, respectfully following the above decisions, we confirm the impugned finding of the ld. CIT(A) in this regard and dismiss the ground raised in this appeal raised by the Revenue.

7. In the result, the appeal of the Revenue stands dismissed.

The order is pronounced in the open court on 11.03.2016.

Sd/-

(J.S.REDDY)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Dated: 11th March, 2016

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi