IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BENGALURU

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No. and Asst. year	*Appellant*	*Respondent*
274/Bang/2014 2009-10	Karnataka Renewal Energy Development Ltd. Shanthi Gruha, Bharat Scouts & Guides Bldg., Palace Road, Bengaluru-560001. *PAN: AACCK 3953 F*	Asst. Commissioner of Income-tax, Circle 11(5), Bengaluru.
1490/Bang/2013 2010-11	-do-	Dy. Commissioner of Income-tax, Circle 11(1), Bengaluru.
713/Bang/2015 2011-12	-do	Dy. Commissioner of Income-tax, Circle 11(5), Bengaluru.
212/Bang/2014 2009-10	Dy. Commissioner of Income-tax, Circle 11(5), Bengaluru	Karnataka Renewal Energy Development Ltd., Bengaluru.
1596/Bang/2013 2010-11	-do-	-do-

Assessee by : Shri V.Srinivasan, Advocate.
Revenue by : Shri G.R.Reddy, CIT(DR)

Date of hearing : 14/09/2017
Date of pronouncement : 13/12/2017

O R D E R

Per BENCH :

These are cross appeals filed by the assessee as well as the revenue directed against the orders of the Commissioner of Income-tax(Appeals)-1, [CIT(A)], Bengaluru dated 21/10/2013 and 14/8/2013 for the assessment years 2009-10 and 2010-11 respectively and the order of the Commissioner of Income-tax(Appeals)-4, Bengaluru, dated

01/04/2015 for the assessment year 2011-12. Since common issues are involved in all these appeals are disposed of by this common order for the sake of convenience.

2. Brief facts of the case are that the assessee is a company duly incorporated under the provisions of the Companies Act, 1956. It was a nodal agency of the Government of Karnataka for development of non-conventional energy sources in the State of Karnataka. It is engaged in the business of generation and sale of power and energy. Return of income for the assessment year 2009-10 was filed on 30/09/2009 declaring 'nil'. Against said return of income, the assessment was completed at total income of Rs.8,44,10,526/- vide order dated 30/09/2011 passed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. The disparity between returned income and the assessed income is on account of restricting deduction u/s 80-IA(4)(iv) of the Act to Rs.30,90,933/- and also disallowing prior period expenditure of Rs.27,00,464/-, variation amount u/s 80-IA(4)(iv), the amount allowed by the Assessing Officer (AO) only in respect of profits derived from activity of power generation is on account of and also allocation of indirect expenditure by application of turnover key.

3. On appeal before the CIT(A), the CIT(A) upheld in principle allocation of indirect expenditure but adopted different figures for the purpose of working out deduction. As a result, the assessee was given relief of Rs.30,09,273/-. In respect of prior period expenditure, the CIT(A) confirmed addition only to the extent of Rs.8,06,831/-.

4. Being aggrieved, assessee as well as the revenue is in appeal before us. The assessee raised the following grounds of appeal in its appeal in appeal in ITA No.274/Bang/2014 for assessment year 2009-10,

> *1) The order of the learned CIT[A] in so far as sustaining the additions and partly allowing the appeal is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*
>
> *2) The Learned CIT[A] is not justified in upholding the restriction in respect of the deduction u/s.801A(4)(iv) of the Act, in respect of unallocated expenditure of Rs.98,29,639/- while working out the quantum of deduction u/s.801A(4)(iv) of the Act, under the facts and in the circumstances of the appellant's case.*
>
> *3) Without prejudice to the right to seek waiver with the Hon'ble CCT/DG, the appellant denies itself liable to be charged to interest u/s. 234-B and, 234C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*
>
> *4) For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.*

5. The grounds of appeal No.1 and 4 are general in nature and do not require any adjudication.

6. Ground No.2 challenges the direction of the CIT(A) confirming allocation of indirect expenditure to the unit of power generation for the purpose of computing deduction u/s 80IA(4)(iv) of the Act. The learned counsel for the assessee vehemently contended that the Legislature has employed the word 'derived from'. On plain reading of the provisions of section 80IA, corporate expenses or indirect expenditure are not required to be allocated to the unit of power generation for the purpose of working out profits eligible u/s 80IA(4)(iv) of the Act. Reliance in this regard was placed on the following decisions:

i. *Cambay Electric Supply Industrial Co. Ltd. vs. CIT* (113 ITR 84)(SC);

ii. *Tide Water Oil Co., (India) Ltd. vs. CIT* (353 ITR 300)(Cal); and

iii. DCW Ltd. vs. Addl.CIT (2010) 37 SOT 322(Mum)

On the other hand, ld.CIT(DR) contested that indirect expenditure should be allocated to the unit of power generation for the purpose of calculating profit eligible for deduction u/s 80IA(4)(iv) of the Act.

7. We heard rival submissions and perused the material on record. The only dispute is with regard to method of working out of profits eligible for deduction u/s 80IV(4)(iv) of the Act. There is no challenge as to the eligibility of the unit for deduction u/s 80IA of the Act. The dispute is only with regard to the method of computation of profits eligible for deduction u/s 80IA(4)(iv) of the Act. The bone of contention between assessee and the AO is with regard to allocation of indirect expenditure/corporate expenditure to the activity of power generation. This issue had come up for consideration before the Hon'ble High Court of Calcutta in the case of *Tide Water Oil Co.(India) Ltd.*(supra) held as follows:

> **"21.** We have considered the submissions of the learned counsel for both the parties. It appears to us from the argument of Mr. Poddar appearing for the appellant-assessee that this court should accept the interpretation of section 80-IA of the said Act the expenses incurred at the Silvasa unit should be taken into account for Silvasa alone not that of the Corporate and head office expenses. In this context, we have read the judgment of the learned Tribunal carefully and also that of the courts. We are of the view that in this matter there is no scope for fresh interpretation of section 80-IA for its applicability to the aforesaid relevant assessment years by reason of the fact that the learned Tribunal "D" Bench, Calcutta, in I. T. A. No. 1408 (Kol) of 2003 for the assessment years 1999-2000 (at page 226 of the paper book, volume III) and in I. T. A. No. 2753/Kol/2003 (at page 229 of the paper book, volume II) 2000-01 delivered judgments holding on March 29, 2004 and September 10, 2004, respectively on this issue, that the corporate expenditure essentially

incurred for the Silvasa unit has to be taken into account for the purpose of allowing the benefit under the aforesaid section. Both the judgments aforesaid were rendered on identical points. These judgments have even accepted by the assessee. We, therefore, quote the relevant portion of the said earlier judgment and order of the learned Tribunal :

> "We have considered the rival contentions and carefully perused the orders of the authorities below, and deliberated on the case law referred to by both the lower authorities as well as cited at the Bar by the learned authorised representative and the Departmental representative. As per the provisions of section 80-IA, deduction is to be allowed on the profit of an undertaking referred to in sub-section (iv) of section 80-IA. Thus, the intention of the Legislature is to give deduction in respect of the profits and gains from the industrial undertaking or enterprise engaged in infrastructure development, etc. For arriving at the correct profit of the industrial undertaking, the expenditure related to such undertaking is to be properly accounted for. Only by making entry under the head 'corporate expenses', the assessee is not allowed to increase the profit of the industrial undertaking, just by debiting the same in the head office account, the expenses which are actually attributable to the industrial undertaking on the profit of which deduction is eligible under section 80-IA. We had carefully gone through the details of corporate expenditure which has been narrated by the learned Commissioner of Income-tax (Appeals) in his order at page 4 and found that no reasoning has been given by the learned Commissioner of Income-tax (Appeals) for treating this expenditure as not related to the Silvasa unit. No justification has also been given by the learned Commissioner of Income-tax (Appeals) for treating these expenses as corporate expenses and not related to the manufacturing activity of the assessee's unit. After going through the nature of the expenses like salary, wages and bonus of Rs. 56,93,453, it is very difficult to presume that such a heavy salary, wages and bonus will be paid just to maintain a corporate office . . .

The Hon'ble High Court upheld the principle of allocation of common expenditure to the eligible units and non-eligible units. The Hon'ble High Court only ruled that application of rule of allocation for the entire head office expenditure may not reflect the correct method. In other words, expenses which are directly related to units should be allocated to that particular unit. In the light of this judgment of the Hon'ble High Court, there is no necessity of referring to the decision of the co-ordinate benches of Tribunal as it is trite law that the decision of the Hon'ble high

Court is to be preferred to the decision of the co-ordinate bench of Tribunal. In the present case, the AO has applied the turnover key for allocation of common expenditure. We do not find any fallacy in application of turnover key for apportionment of common expenditure as turnover key is held to be good key for allocation of common expenditure. Hence, the ground of appeal is dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

ITA No.212/Bang/2010

9. Being aggrieved by the finding of the CIT(A) by application of turnover key, allocation of common expenditure comes to Rs.98,26,636/- as against Rs.1,28,38,912/- worked out by the AO, the revenue is in appeal (ITA No.212/Bang/2010) raising the following grounds of appeal:

1) *The order of the Learned CIT(Appeals) is opposed to law and the facts and circumstances of the case.*

2) *The C1T(A) erred in restricting the disallowance of unallocated expenditure of Rs.98,29,636/- against the disallowance of Rs. 1,18,38,912/- allowing a relief of Rs.30,09,273/- on allocation of expenditure towards power generation segment without giving any reasons as to how the unallocated expenditure proportionate to the turnover is worked out by him as Rs.98,29,636/-.*

3) *The C1T(A) erred in restricting the disallowance of prior period expenditure of Rs.8,06,831/- against Rs 27,00,046/- made by the AO thus giving a relief of Rs. 18,93,215/- subject to verification of interest component u/s 244A without appreciating that the assessee is following the mercantile system of accounting and the assessee has not been able to prove the liability has crystallized during the year.*

4) *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the C1T(A) be reversed and that of the Assessing Officer be restored.*

10. It is the contention of the revenue that the working adopted by the CIT(A) is not correct. However, since we have upheld the validity of application of turnover key for allocation of common expenditure, we

remand this issue back to the file of the AO to adopt correct figures for working out after giving due opportunity of hearing to the assessee.

11. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

12. The assessee raised the following grounds of appeal in its appeal ITA No.1490/Bang/2013 for assessment year 2010-11:

> 1. The order of the learned CIT[A] in so far as sustaining the additions and partly allowing the appeal is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.
>
> 2. The learned CIT[A] is not justified in sustaining a sum of Rs.1,20,864/- as against the addition of Rs.12,97,843/- made as prior period expenditure under the facts and in the circumstances of the appellant's case.
>
> 3. The learned CIT[A] is not justified in upholding the restriction in respect of the deduction u/s.80IA(4)(iv) of the Act, in respect of unallocated expenditure of Rs.1,29,42,287/- and amortization of land of Rs.14,17,560/- while working out the quantum of deduction u/s.80IA(4)(iv) of the Act, under the facts and in the circumstances of the appellant's case.
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> 4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

13. Ground Nos.1 and 4 are general in nature and do not require adjudication. Ground No.2 was not pressed during the course of hearing of the appeal and hence dismissed as not pressed.

14. Ground No.3 challenges the finding of the CIT(A) upholding the allocation of common expenditure to power generation unit for the

purpose of computing deduction u/s 80IA(4)(iv) of the Act. This issue was decided by us against the assessee in ITA No.274/Bang/2014 for assessment year 2009-10 wherein we have upheld allocation of common expenditure by application of turnover key. For the same reasons, we dismiss the ground of appeal.

15. In the result, the appeal filed by the assessee is dismissed.

16. The revenue raised the following grounds of appeal in ITA No.1596/Bang/2013 for assessment year 2010-11:

1. The order of the Learned CIT (Appeals is opposed to law and the facts and circumstances of the case.
2. The CIT(A) erred in not appreciating the fact that the assessee itself had submitted vide its letter dated 19-10-2012 that prior period expenditure pertaining to provisions of income tax, FBT and income tax refund of Rs. 6,34,781 are to be added back to the income of the assessee and also that the assessee did not give any explanation for the claim of balance amount of Rs. 7,00,684 as to whether the same crystallized during the year under consideration or not
3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.
4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

17. The AO made addition of Rs.12,97,843/- on account of prior period expenditure. On appeal before the CIT(A), the CIT(A) after considering the details of prior period of expenditure filed before him had come to conclusion that after deducting prior period income of Rs.8,59,261/- out of total prior period expenditure of Rs.13,35,465/- there is only net prior period expenditure of Rs.4,76,294/-. The relevant finding of the CIT(A) is as under:

3.7 At the time of appeal hearing, the appellant furnished break-up of details of prior period expenditure, the same are as under :-

Particulars	Closing Balance	
	Debit	Credit
Prior Period Expenditure- Application Fee	71,250.00	
Prior Period Expenditure- DPR Proc. Fee-Bhimakali	1,00,000.00	
Prior Period Expenditure- Ident. & Pre. Of Feas. Rep.	2,01,270.00	
Prior Period Expenditure- Income Tax FY 2007-08	84,415.00	
Prior Period Expenditure- Local Conveyance	5,400.00	
Prior Period Expenditure- Petrol & Lubricates	20,227.00	
Prior Period Expenditure- Project Exp-Sogi & MH	26,600.00	
Prior Period Expenditure- Refund of Income Tax	5,50,366.00	
Prior Period Expenditure- SPV Service Charges	2,14,500.00	
Prior Period Expenditure- Travelling Allowance	61,437.00	
Grand Total	13,35,465.00	

Thus, the CIT(A) upheld the addition on account of prior period expenditure to the extent of Rs.1,20,814/-. It is clear that the CIT(A) has deducted prior period income from prior period expenditure. This in our considered opinion, the approach of the CIT(A) is against the basic principles governing allowability of prior period expenditure. It is trite law that expenditure which is crystallized during the previous years relevant to assessment year under consideration should be allowed as deduction, different principle govern taxing prior period income. Therefore, deducting prior period income from prior period expenditure is against well settled principles of law. Therefore, we remand this issue back to the file of the AO with a direction that after examining evidence filed before the CIT(A) to allow prior period expenditure, if liability of expenditure had occurred/crystallised during the previous year relevant to year under consideration and also to tax prior period income keeping in view the salutary principle of law income of the year alone should be taxed.

18. In the result, the appeal filed by the revenue is partly allowed.

19. The assessee raised the following grounds of appeal in its appeal in ITA No.713/Bang/2015 for assessment year 2011-12:

1. The order of the learned CIT (Appeal) in so far as they are against the Appellant are opposed to law, arbitrary and unjustified.

2. The learned CIT(A) is not justified in upholding the allocation of proportionat unallocated expenditure to an extent of Rs. 59,76,638/- towards income from Power Generation business thereby reducing the profit from the Power Generation business and consequential benefit under Section 80 IA. It is further held in the following decisions that no such allocation is permissible in arriving at the profit of the eligible business.
   a. DCW Ltd. vs Addl CIT (2010) 37 SOT 322 (Mum)
   b. Tide Water Oil Co. (India) Ltd. vs CIT (Cal-HC) : (2013) 353 ITR 0300
   c. Reliance Infrastructure Ltd. v. Addl. CIT (Mum-Trib): (2011) 060 DTR 0419: (2011) 009 ITR (Trib) 0084

3. The learned CIT (A) is not justified in upholding the aforesaid allocation without considering all the submissions made by the Appellant and pass a non-speaking order just by referring to the previous year's assessment.

4. An opportunity of personal hearing may be granted to the appellant.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your Appellant humbly prays that the appeal may be allowed and justice rendered and the Appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of costs.

20. The grounds of appeal Nos.1, 3, 4, 5 & 6 are general in nature and do not require any adjudication. Ground No.2 challenges the finding of the CIT(A) confirming allocation of common expenditure to eligible unit u/s 80IA. This issue was decided against the assessee in ITA

No.274/Bang/2014 for assessment year 2009-10 wherein we have upheld allocation of common expenditure by application of turnover key. For the parity of reasons, we dismiss these grounds of appeal.

21. In the result, the appeal filed by the assessee for assessment year 2011-12 is dismissed.

Order pronounced in the open court on 13th December, 2017

Sd/-	*sd/-*
(SUNIL KUMAR YADAV)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bengaluru.
D a t e d : 13/12/2017

srinivasulu, sps

Copy to :

1 Appellant
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By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore