आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' **अहमदाबाद ।**
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं./ITA.No. 3180/AHD/2014

(**निर्धारण वर्ष /** Asstt Year : 2011-12)

Transpek Silox Industry Ltd., Kalali Road, Atladra, Baroda-390 012 PAN: AAACT3739J	**Vs.**	The ACIT, Range-4, Aayakar Bhavan, Baroda.
(Appellant)		(Respondent)

अपीलार्थी ओर से / **Appellant by:**	Shri Sanket Bakshi, A.R.
प्रत्यर्थी की ओर से/**Respondent by:**	Shri V. K. Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing	21/12/2017
घोषणा की तारीख /Date of Pronouncement	28/12/2017

आदेश / O R D E R

PER MANISH BORAD, ACCOUNTANT MEMBER

This appeal of the assessee relating to assessment year 2011-12 is directed against the order of Learned Commissioner of Income Tax (Appeals)-III, Baroda dated 28.09.2014 which is arising out of order u/s.143(3) of the Act dated 30.01.2014 framed by ACIT, Circle-4, Baroda.

2. Briefly stated facts as culled out from the records are that the assessee is a limited company engaged in the manufacturing of industrial chemicals. The assessee company is a joint venture between Silox S. A. Belgium and Transpek Industries Limited.

Assessee runs five units out of which for unit-II which is situated at Silvassa, assessee has claimed deduction u/s. 80IB of the Act @30% of the profits earned during the year. E-return of income filed on 25.11.2011 showing total income of Rs. 41.22 crore. Case selected for scrutiny through CASS. Notices u/s. 143(2) & 142(1) of the Act were duly served upon the assessee. After perusal of records and details filed by the assessee various additions were made which *inter alia* included disallowance of deduction u/s. 80IB of the Act for the alleged improper allocation of salary, wages and bonus expenses and disallowance of deduction u/s. 35(2AA) of the Act. Income assessed at Rs. 44.43 crore (approx).

3. Appeal by the assessee before Ld. CIT(A) brought part relief.

4. Now the assessee is in appeal before the Tribunal raising following grounds of appeal:-

1. *The learned Commissioner of the Income Tax (Appeal) - III, Baroda ["the CIT(A)"] erred in fact and in law in confirming the action of the Additional Commissioner of Income Tax, Circle-4, Baroda ("the AO") in reducing the deduction u/s. 80IB of the Income Tax Act, 1961 ("the Act).*

2. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in allocating managerial commission of Rs. 1,41,79,213/- and salary, wages & bonus of Rs.5,06,56,289/- in the ratio of turnover to the Silvassa Unit II and thereby reducing the deduction u/s. 80IB of the Act.*

3. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in allocating managerial commission of Rs. 1,41,79,213/- in the ratio of turnover to the Silvassa Unit II despite the fact that the amount of managerial commission was already included in the aggregate amount of salary, wages &*

bonus of Rs. 5,06,56,289/- and thereby confirming double adjustment made by the AO.

4. *The Learned CIT(A) erred in fact and in law in conforming the action of A.O. in disallowing deduction of Rs. 3,86,400/- u/s. 35(2AA) of the Act.*

5. *Without prejudice to above the learned CIT(A) erred in fact and in law in not allowing deduction of Rs.2,20,800/- being 100% of expense despite the fact that the same was incurred for business purpose.*

5. Issue raised in ground no.1, 2 and 3 revolves round the reduction of deduction u/s.80IB of the Act by the Assessing Officer by further allocating the common expenses incurred for various units run by the assessee. At the outset, ld. Counsel for the assessee submitted that the issue raised in these three grounds stands squarely covered by the decision of the Tribunal in assessee's own case relating to Asst. Years 2008-09 and 2009-10 vide ITA Nos. 1073, 1074, 1086 and 1087/Ahd/2013 order dated 17.01.2017.

6. On the other hand ld. Departmental Representative supported the order of lower authorities.

7. We have heard the rival contentions and perused the records placed before us and gone through the decision of Tribunal relied by ld. Counsel for the assessee. We find that the assessee which is engaged in the business of manufacturing industrial chemicals runs various manufacturing units named as Silvassa Unit–I, Silvassa Unit – II and other three units situated at Atladra, Ekalbara and Bhiwandi. Assessee has claimed deduction u/s.80IB of the Act @30% of the

profit earned from Silvassa Unit–II at Rs.2,88,01,427/-. During the course of assessment proceedings, ld. AO observed that there were certain expenses relating to Salary, Wages, Bonus and etc., which even though seems to have been incurred commonly for all the units but the assessee has not allocated portion of such expenses while calculating the profits for Silvassa Unit-II.

8. We further observe that assessee is allocated only Rs.83,09,008/- for Silvassa Unit–II, which ld. AO further enhanced to Rs.2,25,78,577/- by way of adding additional allocation of expenses of Rs.1,42,69,569/- to the expenses claimed by the assessee for Silvassa Unit – II. Accordingly, net profit for Silvassa Unit – II was re-calculated at Rs.8,96,03,511/- as against Rs.10,38,73,080/- shown by assessee and accordingly, deduction u/s.80IB of the Act was calculated @30% at Rs.2,68,81,053/-. Further ld. CIT(A) partly sustained the allotted allocation by the Assessing Officer.

9. We also observe that assessee which is claiming deduction u/s.80IB consistently since last many years, came in appeal before the Tribunal on the very same issue of allocation of Managerial remuneration, salary and wages and succeeded. Co-ordinate Bench in its order dated 17/01/2017 pertaining to assessee for Asst. Year 2008-09 and 2009-10 observed as follows:

> *"18. We have given a thoughtful consideration to the orders of the authorities below. The factual matrix of the allocation of expenses by the assessee has already been exhibited elsewhere. In our considered opinion, only those expenses which have direct nexus with carrying on activity of undertaking has to be reduced*

for determining the quantum of deduction and those expenses which have indirect or remote nexus should not be deducted. For this proposition, we derive support from the decision of the Co-ordinate Bench Delhi in the case of Catvision Products Ltd. 142 taxmann.com 104 in ITA No. 4436 and 4590/Del/1996.

19. The Hon'ble Madras High Court in the case of CIT vs. Hindustan Lever Ltd. in Tax Case (Appeal) No. 219 of 2006 and 267, 269, 270,273 & 274 of 2008 had the occasion to consider the following question of law:-

> *"Whether in the facts and circumstances of the case the Tribunal was right in holding that the common head office expenses cannot be apportioned to the various units on the basis of their respective turnover for the purpose of calculation of deduction under Section 10B, 801 and 80 HH?*

20. And the Hon'ble High Court held as under:-

3. A perusal of the order of the Tribunal shows that it followed the orders relating to assessment years 1981-82 to 1991-92 dated 28.5.2002 deciding the issue in favour of the assesses. Thus, the assessee's appeals were allowed. Learned counsel for the assessee placed before this Court the Tribunal's order passed in the assessee's own case on the identical claim dealt with under paragraph 28 of the order relating to assessment year 1984-85, paragraph 53 of the order relating to assessment year 1987-88 and paragraph 77 of the order relating to assessment year 1990-91. The Tribunal pointed out that the Head office monitored the requirement of finance and other action which were necessary for running all the units. Consequently, the administrative expenses though relatable to the various units, are expenses incurred in general, towards the well being of the business. Thus, the Tribunal granted the relief to the assessee holding that the head office expenses could not be proportionately distributed among the various units or allotted to any particular unit independently. The order passed by the Tribunal had not been canvassed by the Revenue before this Court by way of filing any Tax Case (Appeal) and that the order of the Tribunal had attained finality. Present Tax Case (Appeal) is filed by the Revenue as against the orders of the Tribunal relating to assessment years 1991-92, 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98. When the same was pointed out to the learned standing counsel, he placed reliance on the

decision of the Apex Court reported in 248 ITR 432 CONSOLIDATED COFFEE LIMITED v. STATE OF KARNATAKA as well us to the decision of the Madhya Pradesh High Court reported in (2012) 81 CCH 031 PRESTIGE FOODS LIMITED v. CIT, and submitted that the common expenses be apportioned among the various units depending on the turnover. We do not find that the above stated decisions would be of any assistance to the Revenue, particularly the decision of the Apex Court.

4. A reading of the Apex Court decision reported in 248 ITR 432 CONSOLIDATED COFFEE LIMITED v. STATE OF KARNATAKA shows that it relates to the claim under the Karnataka Agricultural Income Tax Act, 1957 and a specific ride framed in 1957. The Apex Court referred to Rule 7 of the Karnataka Agricultural Income Tax Rules, which reads as follows:-

"Computation of deduction on mixed income where a deduction in respect of any item admissible under Section 5 or under rule 5, is a common charge incurred (or the purpose of deriving agricultural income assessable under she Act and income chargeable under the Indian Income Tax Act, 1922, the deduction admissible under the Act shall be the actual amount relating to the income derived from agricultural operations and proved by accounts or other conclusive evidence. Where no such accounts or evidence is produced She Agricultural Income Tax Officer shall proceed to assess the income to the best of his judgment. "

5. Referring to Ride 5 of the Karnataka Agricultural Income Tax Rides, the Supreme Court pointed out that the crucial words in the said rule are that the deductions admissible under the Act shall be the actual amount relating to the income derived from agricultural operations and proved by accounts or other conclusive evidence. Where no such accounts or evidence available, the Assessing Officer can proceed to assess the income to the best of his judgment. In confirming the view of the Karnataka High Court, the Supreme Court also affirmed the similar view rendered by this Court in the decision reported in 130 ITR 908 CIT v. MANJUSHREE PIANTATIONS LIMITED.

6. As far as the above slated decision is concerned, the deduction is based on Rule 5. In the absence of any specific provision in the

Income Tax Act and more so in the absence of any such provision, there being no material to show that the expenditure though common were with reference to individual units relatable to the income earned, we do not find any justifiable ground to accept the plea of the Revenue. The assessee had taken the contention that the expenses incurred was for the overall management of the units as well as for providing finance. In the circumstances, the decision of the Apex Court is misplaced.

7. As far as the decision of the Madhya Pradesh High Court reported in (2012)81 CCH 031 PRESTIGE FOODS LIMITED v. CIT, is concerned, the assessee did not furnish the expenses incurred by the units for the purpose of considering the deducibility. The Madhya Pradesh High Court viewed that in the absence of any details being made available by the assessee to establish that the particular expenses were incurred for its particular unit out of its two units, the expenses had to be treated as one for both the units which has to be divided based on the proportionate to the turnover. The question that arises for consideration is not the same as had been considered in the Madhya Pradesh High Court. It is not denied by the Revenue that assessee's units have separate accounts indicating their income and the expenses. The assesseee does not claim any deduction on the expenses incurred by the Head Office. The only question is us to whether the common expenses incurred by the Head Office for the purpose of maintaining the units would nevertheless be subjected to the doctrine of proportionality for the purpose of deduction.

21. The Hon'ble High Court of Bombay in the case of Zandu Pharmaceutical Works Ltd. in Tax Appeal No. 8 of 2007 was seized with the following question of law.

"Whether Tribunal was justified in confirming the allocation of research and development expenses incurred by the head office among the four manufacturing units on the presumption that (he expenditure so incurred was for the benefit of these manufacturing units?"

22. And the Hon'ble High Court held as under:-

- *The head office and each of the units have their own separate R&D departments, including laboratories. The R&D work related*

to the development of new medicinal products. None of the units manufactured these products. The manufacturing activities carried on all the units did not pertain to the new drugs developed/to be developed by the said R&D activities. (Para 5)

- *Is not the respondent's case that any of the units had benefited by the said R&D activities pertaining to the new drugs or had utilized the resultant benefit thereof, if any, in any manner whatsoever. It is not the respondent's case that the assessee manufactured the said new drugs through or even with the assistance of these units.*
- *Except on the basis of presumptions, it is not even the respondent's case that the existing activities of any of the units in fact benefited from or could benefit from the said R&D activities. It is also important to note that each of the units manufactures different items and therefore, also carries out independent R&D work. (Para 8)*
- *While computing the profits and gains of the concerned undertaking, only expenses relating thereto can be deducted. In other words, the expenses must he incurred, for and on behalf of the concerned undertaking. The expenses attributable to any other unit or the head office expenses which have no relevance to the industrial undertaking cannot be deducted in respect of the said undertaking while computing the profits and gains of the undertaking. (Para 10)*
- *Revenue submitted that any research and development activity carried out by the head office would automatically ensure to the benefit of the units/industrial undertakings.*
- *The submission proceeds on an erroneous basis and does not lake into consideration the facts of the case at all in the instant case, the said R&D activities were in relation in the new drugs. There is nothing to indicate that in the event of the assessee deciding to commercially exploit the benefits of the R&D work, the products would he manufactured by the said units. The fallacy in the submissions proceeds on the hypothetical basis that the said products would be manufactured by each of the units or any one of them. (Paras 16 & 17)*
- *The fallacy also arises on account of an erroneous presumption that the benefit of any R&D activity can only be exploited by an enterprise utilizing the same in its manufacturing activities. That is not so. An enterprise can always assign the benefit thereof to a third party. It can always grant a licence in respect of any patent or design to a third party. In that event, the oilier units would not derive any benefit in respect thereof. The presumption of a nexus*

between the R&D activities and the units is not well founded. (Para 18).

- *Therefore, the Tribunal was not justified in confirming the allocation of R&D expenses incurred by the head office among manufacturing units. (Para 19).*

23.In the light of the judicial decisions discussed hereinabove , we find that the assessee has maintained separate books of accounts for Silvassa unit-l & II as evident from the two Audit Reports exhibited at pages 7 to 19 and 20 to 33 of the paper book. A perusal of the orders of the authorities below shows that the allocation of expenses have been made more out of compulsion then out of necessity. In our considered opinion and the understanding of the facts, the A.O. has not pointed out any flaw or defect in the allocations statement exhibited elsewhere. We find force in the contention of the Id. counsel that the Managerial Commission cannot be allotted to the Siivassa unit. We also agree that only expenses relating to the concerned undertaking should be deducted from the profits thereon. Inthe absence of any direct nexus brought on record by the revenue authorities for the impugned allocation of expenses, we do not find any merit in the said allocation. We, accordingly, direct the A.O. to delete the allocations re-drawn by him. This grievance is accordingly allowed"

10. We therefore in the given facts and circumstances of the case and respectfully following the decision of Tribunal observe that the facts are similar so much so that the Assessing Officer failed to point out any direct nexus of the alleged common expenditures to have been incurred for Silvassa Unit – II and also did not pointed out any defect in the allocation statement prepared by the assessee for expenses claimed as deduction for calculating net profit for Silvassa Unit – II. We therefore set aside the findings of the ld. CIT(A) and allow ground 1, 2 and 3 of the Assessee and direct the Assessing Officer to allow the deduction u/s.80IB of the Act at Rs.2,88,01,427/- as claimed by the assessee in its return of income.

11. Ground No.4 and 5 relates to disallowance of weighted deduction u/s.35(2AA) of the Act. Brief facts related to this issue are that the assessee paid an amount of Rs.2,20,800/- to National Chemical Laboratory, which is a unit approved u/s.35(2AA) of the Act and claimed weighted deduction of 175% i.e. Rs.3,86,400/-. However, during the course of assessment proceedings, assessee was unable to submit Form 3CI, (which is a receipt of payment) before the Assessing Officer. As a result thereof deduction of Rs.3,86,400/- was denied. Appeal against this disallowance before ld. CIT(A) did not bring any relief to the assessee.

12. Now the assessee is in appeal before the Tribunal.

13. Ld. Counsel for the assessee submitted that it is true that Form 3CI was not submitted before the assessing authority but the assessee made an application to the National Laboratory in Form 3CG and research programme carried out by the assessee is also approved by the CSIR in Form 3CH. He further contended that as per Section 35(2AA) of the Act, the requirement of claim of weighted deduction is the payment of the amount with the specific direction under an approved programme. Ld. Counsel further made an alternative submission that if in case weighted deduction of 175% is not given for non submission of Form 3CI, then atleast necessary direction may be given to the Assessing Officer for allowing the deduction of Rs.2,20,800/- being the payment made for business purposes to the National Laboratory.

14. On the other hand, ld. Departmental Representative supported the order of lower authorities.

15. We have heard the rival contentions and perused the records placed before us. These two grounds relates to disallowance of weighted deduction claimed u/s.35(2AA) at Rs.3,86,400/-, which has been calculated @175% of the amount of Rs.2,20,800/- paid by the assessee to National Chemical Laboratory. The very basic necessity for claiming the weighted deduction u/s.35(2AA) of the Act is to obtain Form 3CI prescribed under rule 6(6) of the I. T. Rules, evidencing receipts for payment for carrying out research u/s.35(2AA) of the Act, to be issued by the National Laboratory University, Indian Institute of Technology or specified person and needs to be presented for verification before the Assessing Authority and assessee failed to comply to this requirement. Even up to the stage of hearing before the Tribunal, assessee has been unable to produce Form 3CI as contemplated in Rule 6(6) of the I. T. Rules. In this circumstances we are unable to accept assessee's plea of allowing weighted deduction of 175% of the amount paid. However, we intend to accept the assessee's alternate plea of allowing the deduction of expenditure of Rs.2,20,800/- paid by the assessee to National Laboratory. From perusal of Form 3CH (Rule 6(6) of the I.T. Rule) which is an order of approval of scientific research programme placed in Paper Book, we find that the assessee has paid Rs.2,20,800/- through cheque No.265292 dated 22.11.2010. We therefore accept the assessee's alternate plea and allow the

expenditure of Rs.2,20,800/- as against Rs.3,86,400/- claimed by the assessee. Ground No.4 and 5 of the assessee's appeal are partly allowed.

16. In the result, appeal of the assessee is party allowed.

Order pronounced in the Court on 28/12/ 2017 at Ahmedabad.

Sd/-	**Sd/-**
(S.S. GODARA)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Priti Yadav,Sr.PS

Dated, 28/12/2017

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **संबंधित आयकर आयुक्त** / Concerned CIT
4. **आयकर आयुक्त (अपील)**/ The CIT(A)-III, Baroda.
5. **विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण , अहमदाबाद** /DR,ITAT, Ahmedabad.
6. **गार्ड फाईल** /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt.Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad

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