

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" New Delhi**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI O. P. KANT, ACCOUNTANT MEMBER**

I.T.As No.2763, 2764, 5584/DEL/2016
Assessment Years: 2008-09, 2011-12 & 2012-13

DCIT, Circle-Rewari, Rewari.	v.	M/s. Nippon Leakless Talbro Pvt. Ltd., Plot No.125-A, Sector-06, HSIIDC, Growth Centre, Bawal, Rewari.
TAN/PAN: AACCN 0630J (Appellant)		(Respondent)

Appellant by:	Shri Ravi Kant Gupta, Sr. D.R.		
Respondent by:	Shri V.K. Agarwal, AR.		
Date of hearing:	20	12	2017
Date of pronouncement:	22	12	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed by the Revenue against separate impugned orders dated 14.03.2016 for the assessment year 2008-09 and 2011-12; and order dated 17.08.2016 for assessment year 2012-13 passed by Id. CIT (Appeals), Rohtak for the quantum of assessment passed u/s. 143(3)/144 of the Income Tax Act, 1961.

2. Since issues involved are by and large common, therefore, same were heard together and are being disposed of by way of this consolidated order.

3. We will first take up the appeal for the Assessment Year 2008-09, wherein the Revenue has raised the following grounds of appeal:-

“1. The CIT (A) has erred in deleting the addition of Rs. 1,23,27,262/-made on account of management fee paid to M/s Talbros Automotive Components Ltd. Which is clearly in violation of the section 40A (2)(b) of the I.T. Act and no reasonableness has been proved by the assessee with regard to the fair market value of the services/facilities, legitimate needs of the business and benefits accrued for the services/facilities for which the payment is made and no such services was needed by the assessee company uptill A.Y. 2007-08 also.”

4. At the outset, ld. counsel for the assessee submitted that, this issue stands covered in favour of the assessee by the judgment of the Tribunal in assessee's own case for the Assessment Year 2010-11. He further submitted that the ld. CIT (A) too has followed the said Tribunal order.

5. On the other hand, ld. D.R. strongly relied upon the order of the Assessing Officer.

6. After considering the relevant finding given in the impugned orders as well as the order of the Tribunal, we find that Assessing Officer had noted that the assessee had paid 'management fees' worth Rs.1,23,27,262/- to its sister concern, namely, M/s. Talbros Automotive Components Ltd. The Assessing Officer has made the addition after observing and holding as under:-

- i. *The assessee made huge payments to its related party in name of the management fees but did not offer any explanation regarding the fair market value. Hence, this arrangement is clearly in violation of the section 40A (2)(b) of the IT Act.*
- ii. *Regarding the details of services rendered, the assessee had given general description. However, no specific details are provided so as to reach the reasonability & rationality of the expenses incurred.*
- iii. *The criterion of making payment to the TACL is not based on quality and quantity of work or services. Rather, it is a simple conduit to transfer the substantial part of profit to its related party @ 10% profit before tax. The said arrangement is beyond the business prudence as no business man would ever divert its share of profits when he cannot weigh the actual cost vis-a-vis the benefit derived out of it.*
- iv. *The Agreement furnished by the assessee seems an afterthought process and it is not at stamp duty paper, no stamp of signing authorities is there. Further, no specific details, flowchart, methodology etc is given in clear terms.*
- v. *During the proceedings of AY 2010-11, the assessee had set up unit at Haridwar without any aid of such management services, as evident from the P&L account of the assessee company for AY 2010-11 & AY 2011-12. For instance, for AY 2011-12 the Management Consultancy Fees are debited as Rs. 0/- in Haridwar unit and Rs 4,48,19,523/- in Bawal unit. It suggests that there is no commercial expediency for incurring such huge expenses for the Bawal unit as well. Further, no such services were needed by the assessee uptill AY 2007-08 also.*
- vi. *The decision of lumpsum payment on basis of the profits derived by the assessee company in lieu of unquantified and undetailed services implies only the tax evasion tactics of the assessee. The entire transaction of diverting profits seems coloured and reliance is also placed here on the decision of Apex Court in case of McDowell and Co. Ltd. Vs Commercial Tax officer wherein it was held that Colourable devices are not part of tax planning.*
- vii. *Assessee's view that tax has been duly deducted on the payment by the company and the assessee is also not reasonable as the principles of the taxation states that right*

person should be taxed for the right year for the right income. Further, the issue is being discussed about contravention of provisions of section 40A of the IT Act' 1961, i.e., non-adhering of the statute and the entire arrangement of affairs from view of reasonability.

- viii. *The case laws relied upon by the assessee are very old and general in nature and are mainly related to the provisions of section 37(1) & 36(1)(iii) except one namely CIT vs. Padmani Packaging (P) Ltd. [2006] which is with reference to provisions of section 40A(2). In the said case law, only the issue paying higher commission expenses was discussed. In the judgement of Romesh Kumar vs. CIT [2014], the issue has been decided in favour of revenue for the commission expenses issue.*

In view of above facts, the management fees paid by the assessee company worth Rs 1,23,27,262/- are being disallowed and are added to the total income.”

7. The ld. CIT (A) following the order of the Tribunal for the assessment year 2010-11 has deleted the said addition.

8. We find that the Tribunal has discussed this issue in detail and has finally concluded in the following manner:-

We heard the rival submissions and perused the material on record. It appears from the assessment order that the Assessing Officer had disallowed the impugned payment to its sister concern on the ground that the appellant had not produced any evidence in support of having rendered the services by M/s Talbros Automotive Components Ltd. During the course of hearing, the appellant filed the additional evidence in support of the services rendered which was admitted by us as mentioned in paragraphs supra. This clearly establishes that the appellant had received the services from the said company. That apart, in our view, AO had not met the requirement of the provisions of Section 40A(2). A plain reading of the provisions of Section 40A(2) reveals that where an assessee incurs any expenditure in respect of which payment is required to be made or has been

made to any person referred to in clause (b) of section 40A(2) of the Act and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to (a) fair market value of the goods, services or facilities for which the payment is made; or (b) the legitimate needs of the business of the assessee; or (c) the benefits derived by or accruing to the assessee on receipt of such goods, services or facilities, then the Assessing Officer shall not allow as a deduction so much of the expenditure as is so considered by the Assessing Officer to be excessive or unreasonable. Therefore, it becomes apparent that the Assessing Officer is required to record a finding as to whether the expenditure is excessive or unreasonable in relation to any one of the three requirements prescribed. This opinion has to be formed by the Assessing Officer based on the material evidence available on the record. The Assessing Officer is duty bound to bring on record the comparable fair market value of the services rendered to say that the value paid by the assessee is excessive or unreasonable. We find no evidence on record to notice that the Assessing Officer made efforts in this direction. He simply made disallowance based on the surmises and conjectures.

13. We may also refer to the scope of Section 40A(2) as explain by the CBDT in Circular No. 6P, dated 06.07.1968. The CBDT clarified that while examining the reasonableness of expenditure the Assessing Officer is expected to exercise his judgment in a reasonable and fair manner. It should be borne in mind that the provision is meant to check evasion of tax through excessive or unreasonable payments relatives and associate concerns and should not be applied in a manner which will cause hardship in bona fide cases.

14. In CIT Vs. Edward Keventer (P.) Ltd. [1972] 86 ITR 370, the Calcutta High Court considering identical provision in 1922 Act, it was held that the section places two limitations in the matter of exercise of the power. The section enjoins the Assessing Officer in forming any opinion as to the reasonableness or otherwise of the expenditure incurred must

take into consideration (i) the legitimate business needs of the company and (ii) the benefit derived by or accruing to the company. The legitimate business needs of the company must be judged from the view point of the company itself and must be viewed from the point of view of a prudent businessman. It is not for the Assessing Officer to dictate what the business needs of the company should be and he is only to judge the legitimacy of the business needs of the company from the point of view of a prudent businessman. The benefit derived or accruing to the company must also be considered from the angle of a prudent businessman. The term “benefit” to a company in relation to its business, it must be remembered, has a very wide connotation and may not necessarily be capable of being accurately measured in terms of pound, shillings and pence in all cases. Both these aspects have to be considered judiciously, dispassionately without any bias of any kind from the view-point of a reasonable and honest person in business.

15. The aforesaid judgement of Calcutta High Court was affirmed by the Apex Court in CIT Vs. Edward Keventer (P.) Ltd. [1978] 115 ITR 149. In the same line is the judgment of Bombay High Court in the case of CIT Vs. Shtrunjay Diamonds [2003] 261 ITR 258/128, Taxmann, 759.

16. Following the ratio laid down in the above cases, we hold that in the present case also there is no warrant for disallowance of sum of Rs. 1,49,76,358/- paid to M/s Talbros Automotive Pvt. Ltd. as the Assessing Officer failed to discharge the onus that was lying upon him as per the mandate of the provisions of Section 40A(2) of the Act. Accordingly, the grounds of appeal from 3 to 3.4 are allowed.”

9. Since the issues involved are identical arising out of similar facts and reasoning given by the Assessing Officer as well as by the Id. CIT (A), therefore, following the judicial precedence in assessee’s own case, we also direct the Assessing Officer to delete

the said addition. Thus, ground raised by the Revenue is dismissed.

10. In the assessment year 2011-12, the Revenue has raised following grounds:-

1. *The CIT(A) has erred in deleting the addition of Rs. 1,49,39,841/- made on account of management fee paid to M/s Talbros Automative Components Ltd. despite the fact that no reasonableness has been proved by the assessee with regard to the fair market value of the services/facilities, legitimate needs of the business and benefits accrued for the services/facilities for which the payment is made. The CIT(A) failed to appreciate that the assessee company is not paying any management fees in its exempt unit situated at Haridwar, claiming deduction u/s 80IC, during the A.Y. concerned but had claimed entire management fees in its taxable unit situated at Bawal, thereby not substantiating the commercial expediency on the part of the assessee.*

2. *CIT(A) is erred in deleting the addition of Rs. 1,20,03,861/- made on account of reallocation expenses between taxable and exempt unit without giving any comments on this in her order, and even the assessee company in its ground of appeal to CIT(A) has admitted that the proper allocation of expenses to Haridwar Unit (Tax Exempt) from Bawal unit have not been made in its books of account and admitted to allocate Rs. 3,70,168/- to Haridwar Unit. This shows that the assessee company has not followed the act to properly allocate the expenses to its tax exempt unit. The criterion of taking the product ratio for allocation of the expenses between the units was very vague and unreasonable. As it is turnover which bears a proportionate relation with the expenses rather than no. of products.”*

11. So far as the first issue is concern, admittedly it is similar to the ground raised in the assessment year 2009-10, and therefore, the finding given therein, that it is covered by the order of the Tribunal for the assessment year 2010-11, we hold that ld. CIT (A) has rightly followed the order of the Tribunal in deleting the said addition and accordingly, ground no.1 raised by the Revenue is dismissed.

12. Now so far as the issue raised in ground no.2 is concern, the brief facts are that the assessee company is having two units, one at Bawal which is taxable unit; and other one is at Haridwar, the profits from where is liable for deduction u/s. 80IC @ 100% on such an undertaking. The Assessing Officer noted that the taxable unit (Bawal) is debiting higher expenses as compared to the tax exempt unit (Haridwar) and noted that apportionment/allocation of expenses made by the assessee company in respect of majority of the common expenses were not properly allocated. The expenses considered for allocation by the assessee were as under:-

Head of expense	Haridwar Unit	Bawal Unit
Salary & wages	28,09,125	1,92,02,519
Contribution to PF	93,518	11,32,867
Contribution to ESI		1,48,031
Contribution to Haryana labour welfare fund	-	5,800
Staff welfare & benefits	1,29,140	38,14,662
Contribution to gratuity		3,62,500
Contribution to leave encashment	-	1,98,244
Repair & maintenance	2,59,295	27,99,317
Rent paid for residence of directors	-	14,19,185
Rates & taxes	26,384	1,91,517
Insurance	33,992	5,28,281
Travelling		10,52,444
Sales promotion expenses		2,64,057
Packing freight & forwarding	1,61,234	20,08,657
Printing & stationary	69,583	2,37,879
Postage, telephone & courier	77,222	6,05,910
Remuneration to Auditors		5,45,000
Management consultancy fees Miscellaneous expenses	11,20,423	4,48,19,523 50,06,583
Foreign exchange fluctuation		56,13,569
Bank charges	83	1,25,430

13. The Assessing Officer noted that the allocation is not in commensurate with the turnover of the units like advertisement expenses and Director's salary has not been shown in the tax exempt unit, the Assessing Officer accordingly, proceeded to allocate the indirect expenses in proportion of the turnover which was in ratio of 79:21 in respect of Bawal and Haridwar Unit, respectively. The expenses allocated by the Assessing Officer were as under:-

Head of expense	<i>Haridwar Unit</i>	<i>Bawal Unit</i>
Salary and wages	4622445.24	17389199
Contribution to PF	257540.85	968844.15
Contribution to ESI	31086.51	116944.49
Contribution to Haryana labour welfare fund	1218	4582
Staff welfare & benefits	828198.42	3115603.6
Contribution to gratuity	76125	286375
Contribution to leave encashment	41631.24	156612.76
Repair & maintenance	642308.52	2416303.5
Rent paid for residence of directors	298028.85	1121156.2
Rates & taxes	45759.21	172141.79
Insurance	118077.33	444195.67
Travelling	221013.24	444195.67
Sales Promotion expenses	55454.97	208605.03
Packing freight & forwarding	455677.11	1714213.9
Printing & stationary	64567.02	242894.98
Postage, telephone & courier	143457.72	539674.28
Remuneration to Auditors	114450	430550
Management consultancy fees	9412043.13	35407210
Miscellaneous expenses	1286671.26	4840334.7
Foreign exchange fluctuation	1178849.49	4434719.5
Bank charges	26357.73	99155.27

14. Accordingly, he made the disallowance on account of excess expenditure claimed in the taxable unit at Rs.1,20,30,861/-

15. Ld. CIT (A), first of all noted that assessee is maintaining separate books of account and separate bank accounts for both the units and all the expenses pertaining to each unit have been debited to that unit. He also took note of the fact that in Bawal Unit, there are 10 major customers and 185 products which are being manufactured, whereas in the Haridwar Unit there is only one customer and 12 products have been manufactured. However, he held that certain expenses like salary of Managing director, travelling expenses, auditor's remuneration, etc. are common which needs to be allocated. He further accepted the assessee's plea that in case the allocation is to be made and the same is to be allocated in the product ratio and not in the turnover ratio, because assessee is producing only 15 products from Haridwar Unit and 185 products from Bawal Unit (in the ratio of 12:185) and accordingly, he held that an amount of Rs.3,70,168/- have to be allocated. The relevant observation and facts recorded by the ld. CIT(A) is as under:-

a) *Since the staff and labour is independent at both the units, and it is only Managing Director, who is common to both, at the most, it is his salary and other related expenses to him which can be allocated in the product ratio and not in turnover ratio as explained in para 28 above. The allocation can be as under in the ratio of 12:185: -*

HEAD	TOTAL EXPENSES	HARIDWAR UNIT	BAWAL UNIT
Salary	2727000	166112	2560888
Travelling Expenses	254306	15491	238815
Rent	1419185	86448	1332737
TOTAL	4400491	278825	4121666

b) Similarly auditor's remuneration can be allocated only in the product ratio because the accounts maintained for 10 products will be 10 times than the accounts for 1 product. It cannot be in the ratio of turnover because auditor has to check the number of entries and not the quantum of figure in entry. Whether the entry is for 1 lac or for 10 lacs, the efforts required to put in by the auditor remain same. Accordingly auditor remuneration can be allocated as under: -

HEAD	TOTAL EXPENSES	HARIDWAR UNIT	BAWAL UNIT
Auditor Remuneration	545000	33198	511802

c) As regards Foreign Exchange Fluctuation, the raw material imported from Japan is entered in the books of Bawal unit. No raw material is transferred to Haridwar unit. It is only semi-finished product which is transferred to Haridwar unit. The total cost of import includes cost of raw material, tools and dies and Bought-out-parts. Bought-out-parts and raw material are used only in Bawal unit. It is only tools and consumables, a minor part of which, are transferred to Haridwar unit. Therefore, Foreign Exchange Fluctuation can be apportioned in the ratio of cost as under: -

Head	Cost	Foreign Exchange Fluctuation (FEF)	Haridwar Unit		Bawal Unit
			Cost	FEF	Cost
Raw Material	166003649	4962865	0	0	166003649
Tools etc.	13841900	579174	1389692	58145	12452271
Bought- out-parts	12622032	102231	0	0	12622032
TOTAL	192467581	5644270	1389692	58145	191077952

(Note:- Also FEF amounting to Rs. -30699./- pertains to export from Bawal unit.)

d) Therefore, if at all some allocation is to be done, it could only be Rs. 3,70,168/- (278825 + 33198 + 58145) from Bawal unit to Haridwar unit, of course, this is without prejudice to our claim that , no further allocation is required considering the facts of the case.

14.1 At this juncture, it would be relevant to take note of the fact that in the assessment year 2012-13 also, similar allocation has been done by the Assessing Officer on turnover basis for following expenses:-

Expenses allocated as per turnover

Head of expense	Hardiwar Unit	Bawal Unit	Disallowance of excess expenses debited to bawal unit
Salaries wages & other benefits	10056640.16	25859931.84	5,620,003
Repair & maintenance	935407.76	2405334.24	576,475
Rent	444186.4	1142193.6	444,186
Rates & taxes	59660.72	153413.28	30,686
Insurance	221322.64	569115.36	167,692
Travelling	749685.16	1927761.84	745,040
Sales promotions expenses	67022.2	172342.8	67,022
Packing freight & forwarding	618910.32	1591483.68	587,003
Printing & stationery	86911.72	223487.28	42,632
Postage telephone &	245384.16	630987.84	161,546
Remuneration to Auditors	96600	248400	96,600
Miscellaneous expenses	2060363.48	5298077.52	709,680
Foreign exchange	2845130.4	7316049.6	2,845,130
Bank charges	19077.24	49055.76	17,790
		Total Disallowances	1,21,11,486

14.2 Ld. CIT (A) after considering the assessee's working has worked out the allocation in the following manner:-

a) Since the staff and labour is independent at both the units, and it is only Managing Director, who is common to both, at the most, it is his salary and other related expenses to him which can be

allocated in the product ratio and not in turnover ratio as explained in para 28 above. The allocation can be as under in the ratio of 15:149 :-

HEAD	TOTAL EXPENSES	HARIDWAR UNIT	BAWAL UNIT
Salary	26,38,484	2,63,848	23,74,636
Travelling	17,03,866	1,70,387	15,33,479
Rent	15,86,380	1,58,638	14,27,742
TOTAL	59,28,730	5,92,873	53,35,857

b) Similarly auditor remuneration can be allocated only in the product ratio because the accounts maintained for 10 products will be 10 times than the accounts for 1 product. It cannot be in the ratio of turnover because auditor has to check the number of entries and not the quantum of figure in entry. Whether the entry is for 1 lac or for 10 lacs, the efforts required to put in by the auditor remain same. Accordingly, auditor remuneration can be allocated as under:-

HEAD	TOTAL EXPENSES	HARIDWAR UNIT	BAWAL UNIT
Auditor Remuneration	3,45,000	34,500	3,10,500

c) As regards Foreign Exchange Fluctuation, the raw material imported from Japan is entered in the books of Bawal unit. No raw material is transferred to Haridwar unit. It is only semi-finished product which is transferred to Haridwar unit. The total cost of import includes cost of raw material, tools and dies and Bought- out-parts. Bought-out-parts and raw material are used only in Bawal unit. It is only tools and consumables, a minor part of which, are transferred to Haridwar unit. Therefore, Foreign Exchange Fluctuation can be apportioned in the ratio of cost as under: -

HEAD	COST	Forex Fluctuation	Haridwar Unit	Bawal Unit
Raw-material	246030203	7421011	Cost / FEF 51168714 / 1543402	Cost / FEF 194861489 / 5877609
Tools, etc.	18566994994	1040811	576139 / 32297	17990855 / 1008514
Brought out parts	25072272	1663626	0/0	25072272 / 1663626
TOTAL	234055632	10125448	51744853/1575699	237924349/8549749

d) Therefore, if at all some allocation is to be done, it could be only be Rs. 22,03,072/- (5,92,873 + 34,500/- + 15,75,699/-) from Bawal Unit to Haridwar Unit-----.

14.3 Ld. CIT (A), accordingly, confirmed the addition of Rs. 22,03,072/- on account of allocation of expenses.

15. Before us the ld. Sr. D.R. submitted that, before the Assessing Officer the assessee could not furnish the details of expenditure with supporting documents debited under both the units, hence AO had no other way, except for allocate the expenditure. The Assessing Officer had noted that certain expenses like directors salary, travelling expense of directors, auditor's fees, etc., have not been debited in the tax exempt unit, therefore, he had applied the turnover ratio for working out the disallowance to disallow the expenditure debited in the taxable unit in the manner as incorporated above.

16. On the other hand, ld. counsel for the assessee submitted that the assessee is maintaining separate books of account and separate bank accounts for both the units which fact has not been disputed by the Assessing Officer and accepted by the ld. CIT (A). Once the separate books of account are maintained not only for the operations but also for entire income and expenditure, then there was no requirement for allocating any expenditure or disallowing any kind of expenditure from Bawal unit. Each and every expenditure are identifiable and this fact has not been denied and which fact has been noted by the ld. CIT(A), on perusal of the entire material placed on record before him. He has also called for the remand report of the Assessing Officer on this point. In any case and without prejudice, the assessee had given the allocation of certain expenditure like salary of the directors, travelling expenses, rent, auditor's remuneration, foreign exchange fluctuation etc. The allocation key has been accepted on 'product

ratio basis', because, in Haridwar Unit the assessee is only required to maintain its account and expenditure *qua* fifteen products only as compared to 185 products manufactured in Bawal Unit. Ld. CIT (A) has duly examined this factor and has accepted this allocation key which should be accepted and accordingly, the order of the ld. CIT (A) should be confirmed.

17. In the rejoinder, ld. Sr. D.R. submitted each and every expenditure cannot be allocated on the basis of product ratio, for example, salary, travelling, rent, etc., thus such allocation key cannot be accepted. He also pointed out one important fact that AO has not allocated the "management fees" paid to sister concern as he has made the addition separately. If the management fees is deleted, that it is not disallowable under 40A (2)(b), then allocation of this expenses should also be directed.

18. Ld. Counsel, on this issue submitted that the assessee has allocated management fees to Hardwar unit in A. Y. 2012-13. The first year of Hardwar unit was A. Y. 2011-12. The management fees was not allocated in A. Y. 2011-12 on the following grounds:-

- i) Since A. Y. 2011-12 was the first year of Hardwar unit which was commissioned on 31/03/2010, the management decided to run the plant on its own. This unit was dedicated unit for the new plant of M/s Hero Moto Corp which was opened in Hardwar. There was no other client for Hardwar unit.
- ii) In A.Y. 2011-12, the Hardwar unit purchased intermediate product from Bawal unit and further did remaining manufacturing to get final product. Therefore, all

the processes for manufacturing were not done in Haridwar unit which is very clear from page 128 of the paper book which shows that raw material consumed in Haridwar unit is Nil. For partial manufacturing, the staff at Hardwar unit was competent enough and no need was felt for guidance either from M/s. Nippon Leakless Corporation, Japan or from M/s. Talbros Automotive components Ltd. In A. Y. 2012-13, Haridwar unit started manufacturing right from initial process as is indicated on page 144 of the paper book wherein raw material consumed in Haridwar unit is shown at Rs.5,11,68,714/-. Moreover, new Gaskets for the changed models of Hero Moto Corp were to be developed to meet the requirement of the buyer for which Haridwar unit did not have competent staff. Therefore, management fees was allocated w.e.f. A. Y. 2012-13 and not A. Y. 2011-12.

iii) The original agreement for management fees was entered on 01/10/2007 when Hardwar unit was not in existence. Since earlier the agreement was only for Bawal unit, there was no authority for allocating management fee to Hardwar unit in A. Y. 2011-12. To enable the allocation of management fees to Hardwar unit, Addendum to the original management fees agreement was signed on 01/04/2011 between the appellant and the both the service providers as is evident from page 181 of the paper book. Therefore, on the authority of this Addendum, a management fee was allocated to Hardwar unit in A. Y. 2012-13.

19. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the

material referred to before us at the time of hearing. The assessee is carrying out operation from two units; Bawal unit which is a taxable; and unit of Haridwar which is eligible for deduction 100% u/s.80IC on its profits derived. The Revenue's case is that, the assessee has loaded more expenditure in the taxable unit to reduce the profit and therefore, indirect expenditure have been allocated on the turnover ratio. We find that it is an undisputed fact that the assessee has been maintaining separate bank accounts and separate books of account, wherein income and expenditure are separately debited and credited to the respective books of account. From the perusal of the expenses allocated by the Assessing Officer, we find that he has in general picked up the indirect expenditures for the purpose of allocation, without even identifying the expenditure which can be reckoned as common. Thus, the basis for allocation of expenditure without examining the separate books of account by the AO on the facts and circumstances of the case is not called for and same is rejected. It is further seen that though, the Id. CIT (A) has identified certain expenditure which can be reckoned as common, but he too appears to have not examined the accounts of the units as to which expenditures are identifiable *qua* each unit. Therefore, we are of the opinion that the matter should be restored back to the file of the Assessing Officer for a limited purpose to examine:-

- *Firstly*, to identify the expenditure *qua* each unit from the separate ledger accounts; and if the expenditures debited are attributable for the particular unit, that is, the expenditure pertains to Bawal unit only then same should be allowed from the profits of Bawal Unit or vice-versa for the Haridwar

unit and in that case no allocation should be made for such expenditures.

- *Secondly*, only in case where expenditures are not identifiable and are common in nature that alone should be considered for the allocation purpose.
- *Lastly*, after identifying the common expenditure, the details of which would be provided by the assessee, the Assessing Officer will also examine as to whether the allocation key should be based on 'product ratio' or 'turnover ratio', because, there could be certain expenses, for example, sales promotion, packing and freight etc., definitely the same should be allocated on 'product ratio' wise; however if certain common expenses like salary of managing directors, travelling expenses of the employees which may be common for both the units including that of the directors and auditors remunerations, then same could be taken on ratio of turnover basis. However, the assessee will provide the necessary details for allocation key to common expenses which are identified and only if such expenses required allocation on product ratio then same may be examined and if not, then turnover ratio should be taken.

20. So far as allocation of 'management fees' is concerned, there could not be any allocation in the AY 2011-12 for the reasons stated by the Ld. Counsel above, which is not disputed by the Ld. DR and hence, we hold that for the A.Y. 2011-12, there cannot be any allocation. As for the A.Y. 2012-13, the assessee has already allocated the management fees as admitted above, hence no

further allocation is required. Thus, on this point, we completely agree with the ld. Counsel and reject the arguments raised by the ld. DR.

21. Accordingly, in view of our finding and aforesaid direction the matter is remanded back to the Assessing Officer who shall provide ample opportunity to the assessee to substantiate its case on the issue of allocation in view of our direction. Hence ground no.2 for the assessment year 2011-12; and ground no.3 for the assessment year 2012-13 of the Revenue is partly allowed for statistical purposes.

22. In the assessment year 2012-13 the issue raised in ground nos.1 and 2 is common to the ground raised in assessment year 2009-10, 2011-12, that is, disallowance of “management fees” and therefore, in view of the finding given therein, we uphold the deletion of addition made on account of management fees paid by the assessee to its related party for sum of Rs.1,63,50,000/- and order of the ld. CIT(A) is thus, confirmed.

23. In the result, the Revenue’s appeal for assessment year 2008-09 is dismissed; and appeals for the assessment year 2011-12 and 2012-13 are partly allowed for statistical purposes.

Order pronounced in the open Court on 22nd December, 2017.

sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 22nd December, 2017

PKK:

Copy forwarded to:

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

Assistant Registrar

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