IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos.363 & 364/Rpr/2014
Assessment Years : 2009-2010 & 2010-2011

DCIT 1(2), Aayakar Bhavan, Raipur	Vs.	Godawari Power & Ispat Limited, Plot No.482/2, Industrial Growth Central Phase-1, Raipur
PAN/GIR No.AAACI 7189 K		
(Appellant)	..	(**Respondent**)

Assessee by : Shri R.B.Doshi, AR
Revenue by : Shri P.K.Mikshra, CIT DR

Date of Hearing : 17/01/ 2018
Date of Pronouncement : /01/ 2018

O R D E R

Per Pavan Kumar Gadale, JM

Both the appeals filed by the revenue are directed against the separate orders of the CIT(A)-Raipur, both dated 25.9.2014 for the assessment years 2009-2010 & 2010-2011, respectively.

First, we take up the appeal in ITA No.363/Rpr/2014: A.Y. 2009-2010.

2. Ground No.1 of appeal reads as under:

"Whether in law and on facts & circumstances of the case, the CIT(A) has erred in allowing adding of the profit on sale of fly

ash bricks amounting to Rs.4,05,493/- for the purpose of calculation of deduction under section 80IA of the I.T.Act, 1961."

3. Facts in brief are that the Assessing Officer observed that the assessee is engaged in the business of steel manufacturing-sponge iron & Ferro Alloys and generation of power. The fly ash is a by-product generated out of the said generation activity of electricity. During the assessment proceedings, the AO noticed that the assessee has included sale of fly-ash bricks of Rs.31,85,628/- in the total sale of power division and has claimed deduction u/s. 80IA on the entire profit. The Assessing officer examined the sales account of power division and found that the sale proceeds on sale of the said bricks was found credited and the relevant profits earned on sale of the fly ash bricks are considered by the assessee as eligible profits for the purpose of claiming of deduction under section 80-IA of the Act. The Assessing Officer noticed that the assessee has claimed the deduction in the year Rs.4,05,493/- and therefore, he reduced this amount from the total claim of the assessee.

4. Being aggrieved the view so taken by the AO, the assessee carried the matter before the CIT(A).

5. Before the ld CIT(A), it was argued by the assessee that the fly ash brick plant is an integral part of the power plant. It is a functional requirement of the power plant to make a suitable arrangement for disposal

of fly ash without which the assessee company could not have run the power plant. It was submitted that setting up of fly-ash bricks unit is mandatory as per requirement of the CG Environment Conservation Board. Therefore, profit and loss, if any, has to be considered as eligible for calculating deduction u/s. 80IA of the Act. The assessee has incurred loss of Rs.4,05,493/-, hence the said amount was reduced from the deduction u/s. 80IA of the Act.

6. The CIT(A) considered the above submission of the assessee and allowed the claim of the assessee.

7. Against the above findings of the ld CIT(A), revenue carried the matter in appeal before the Tribunal.

8. Before us, ld A.R. contended that on the above issue, the assessee had come up for consideration in the assessment year 2007-08 & 2008-09 and the assessee has withdrawn the appeal. In view of above, we reverse the order of the CIT(A) and restore the addition made by the Assessing officer. This ground of revenue is allowed.

9. In Ground No.2 of appeal, the grievance of the revenue is that the CIT(A) erred in deleting the disallowance of Rs.3,52,58,222/- on account of loss on foreign exchange fluctuation.

10. The Assessing Officer noticed that the assessee has debited loss on mark to market basis in respect of unsettled foreign derivative transaction as on 31.3.2009. The assessee has made only provision in the books of account. The Assessing officer observed that the actual gain/loss shall be determined only on the settlement date. Therefore, the provision of Rs.5,87,63,703/- debited in the profit and loss account is to be added to the total income of the assessee. Since the 40% of Rs.5,87,63,703/- i.e,. Rs.2,35,05,,481/- has been reduced from the income of power division, the eligible profits of power division shall be increased to the extent of Rs.2,35,05,481/-. Accordingly, the Assessing Officer disallowed the balance amount of Rs.3,52,58,222/-.

11. On appeal, the CIT(A) deleted the addition following the order in assessment year 2008-09 in Appeal No.077/10-11 dated 15.7.2011.

12. After hearing both the sides and perusing the orders of lower authorities, we find that this issue had come up for consideration before the Tribunal in the assessment year 2008-09 in assessee's own case in ITA No.203/BLPR/2011, wherein, the Tribunal has restored the issue to the file of the Assessing officer on the following directions:

> "22. On this issue we have heard both the sides. We have been informed that the forward contract was entered into by the assessee to hedge the loss in respect of sale of carbon credits.

> Since we have held that the receipts from sale of carbon credit were in the nature of capital receipt, therefore, the consequence is that the impugned loss shall also be a capital loss. The present situation is that the revenue authorities have not examined the nature of loss suffered by the assessee and how a provision was made. Whether, it was a foreign derivative transaction or transaction in respect of forward exchange contract pertaining to hedge the loss in respect of carbon credit has not been clearly emerged from the facts of the case. We, therefore, deem it proper to restore this issue to the file of the AO so that he can make necessary enquiry and if it was a foreign exchange loss connected to the carbon credit then naturally the same should not be allowed in the light of the view taken by us about the nature of the carbon credit receipt. This ground of the revenue is therefore, allowed for statistical purposes.'

We, find there being no change in the facts in the present years under consideration than the facts in the assessment year 2008-09, we, respectfully following the decision of co-ordinate Bench in assessee's own case (supra) restore this issue to the file of the Assessing Officer with the same direction as above. Hence, this ground of revenue is allowed for statistical purposes.

13. In Ground No.3, the grievance of the revenue is that the CIT(A) erred in holding that depreciation of Rs.82,99,525/- i.e. 40% depreciation on common fixed assets be not reduced from eligible profit claimed u/s. 80IA of the Act.

14. We have heard the rival submissions and perused the record of the case. The appellant has maintained separate books of account for the Power Division i.e. eligible business and other Divisions being n on-eligible business. The Assessing officer has stated that the depreciation on common assets was not deducted from claim of deduction u/s. 8i0IA of the Act. Therefore, he disallowed the same towards unallocated depreciation not reduced from profit eligible for deduction u/s. 80IA of the Act. On appeal, the CIT(A) deleted the disallowance on the ground that the Assessing Officer has not established any nexus between the said fixed assets with the Power Division of the assessee. We find that similar addition was made by the Assessing officer in the assessment year 2008-09 and the CIT(A) has confirmed the same. On appeal by the assessee, the assessee did not press this ground before the Tribunal. Therefore, this addition was sustained. Since the facts of the present year is similar to that in the year 2008-09, we reverse the order of the CIT(A) and restore that of the Assessing officer. Hence, this ground of revenue is allowed.

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

Now we take up ITA No.364/Rpr/2014: A.Y. 2010-2011.

15. The revenue has taken the following grounds of appeal:

"1. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.2,03,73,385/- u/s. 14A of the I.T.Act.

2. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.25,02,,011/- out of disallowance made by the AO on account of Pooja and festival expenses thereby giving relief of Rs.6,54,900/-.

3. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.21,94,020/- on account of share capital expenses.

4. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.77,58,654/- on account of Social Welfare expenses which have not been incurred wholly and exclusively for the purpose of business.

5. Whether in law and on facts &Y circumstances of the case, the CIT(A) has erred in deleting the disallowance u/s.40A(3) of the I.T.Act, 1961 to Rs.17,54,455/- thereby giving a relief of Rs.7,02,476/-."

16, The Assessing Officer has noticed that the assessee has invested Rs.71,54,15,800/- in shares and dividend and income from these investment is exempt from tax. Therefore, the Assessing Officer did not allow fully the interest expenditure claimed by the assessee at Rs.32,03,91,939/- on borrowed funds and disallowed a sum of Rs.2,03,73,385/-.

17. On appeal, the CIT(A) deleted the disallowance made by the Assessing Officer by discussing the issue at length and also by relying the judicial decisions at pages 2 to 12 of the order. Hence, the revenue is in appeal before us.

18. At the time of hearing, both the sides conceded that Ground No.1 is covered by the decision of the Tribunal in the case of M/s. Alok Ferro Alloys Ltd., vs DCIT in ITA No.233/Rlpr/2011 for the assessment year 2008-09, wherein, on similar facts, it was held as under:

> "Upon hearing both the ld counsels, we find that the assessee's counsel is making a plea that investments made by the assessee company in the present case were strategic investments. They were not made to earn exempt income, but they were made with the intention to hold consolidated holdings in the group companies. We find that this plank of argument of the ld counsel of the assessee was not before the authorities below. The ld counsel of the assessee is confining his argument to his submission that the investments were made in the group companies for strategic purposes and to consolidate holdings and not to earn dividend exempt income.. We find that these submissions were not before the authorities below. This facts also needs factual verification and hence, we remit the issue to the file of the AO. The AO shall examine the pattern of holdings in the group companies and decide as per the assessee's submission before us and in the light of the case laws submitted above and as per law."

19. In view of above, we set aside the order of the CIT(A) and remit the matter back to the file of the Assessing Officer, who shall examine the pattern of holdings in the group companies and decide the issue as per the direction given in the case of M/s. Alok Ferro Alloys Ltd.,(supra). This ground of the revenue is allowed for statistical purposes.

20. Apropos Ground No.2 of appeal, the facts are that the Assessing officer found that the assessee has claimed deduction under the head "pooja & festival expenses" of Rs.15,17,117/- and Rs.16,38,894/- under the head Charity & Donation expenses. The Assessing officer observed that these expenses are not relatable to business purposes of the assessee and, therefore, disallowed the same following the decision of Hon'ble Jurisdictional High Court in the case of Hira Ferro Alloys vs JCIT, 326 ITR 261 (Chhatt)

21. Before the CIT(A), the assessee submitted that the expenses incurred towards charity and donation were in the nature of expenses towards Corporate Social Responsibility and Pooja expenses were incurred for independence day, republic day, viswakarma Pooja celebration and are allowable as business expenditure. The assessee also cited CBDT Circular No.17(F.No.26(2)-II-IT/43 dated 6.5.1983 & Circular No.13A/20/68-IT(A-II) dated 3.10.1968 wherein, it was emphasized that expenses incurred on the occasion of Diwali and Mahurat are in the nature of business expenditure and it was not lay down any monetary limits for the purpose of allowance of the expenditures.

22. Considering the submission of the assessee and also the CBDT Circulars on the issue, the CIT(A) allowed relief of Rs.6,54,900/- and sustained the balance addition.

23. Having heard the rival submissions, we find that the CIT(A) after considering the CBDT circulars held that the expenses under the head charity, donation do not relates to business of the assessee whereas he has allowed deduction for the pooja and festivals aggregating to Rs.6,54,900/-. We see no reason to interfere with the order of the CIT(A), which is hereby confirmed. Ground No.2 of the appeal is dismissed.

24. Adverting to next issue i.e. disallowance of share capital expenses of Rs.21,94,020/-, the Assessing Officer observed that the assessee did not raise any fresh capital during the year, which is verifiable from Schedule –I of balance sheet. The assessee submitted that the assessee is a company listed with BSE, NSE and SEBI and these expenses relate to annual custodian fees, listing fees, compliance certificate fees, printing of annual reports, charges publication of quarterly, half-yearly and annual results as per the requirements of SEBI and other misc professional fees relating to the work. The Assessing Officer rejected the submission of the assessee and disallowed Rs.21,94,020/-.

25. Before the CIT(A), the assessee reiterated the submissions before the Assessing Officer and submitted that as per Board Circular No.10/67/65-IT(A-1) dated 26.8.1965, such expenditure is allowable as revenue expenditure.

26. The CIT(A) deleted the addition by observing that the Assessing officer has disallowed the claim of the assessee without considering relevant schedule of the balance sheet. The nature of expenses as claimed shows that expenses are of recurring nature incurred in connection with various compliances as per listing agreements, etc. He also cited the Board circular(supra) and deleted the addition.

27. Before us, ld D.R. supported the order of the Assessing Officer whereas ld AR supported the order of the CIT(A).

28. We find that the assessee is listed with BSE, NSE and SEBI, and the expenses relate to annual custodian fees, listing fees, compliance certificate fees, printing of annual reports, charges publication of quarterly, half-yearly and annual results as per the requirements of SEBI and other misc professional fees relating to the work, which are recurring in nature. The CIT(A) has deleted the addition after properly appreciating the facts of the case. Hence, we confirm his order and reject the ground of appeal of the revenue.

29. The next issue relates to deletion of disallowance of Rs.77,58,654/- on account of Social Welfare expenses which have not been incurred wholly and exclusively for the purpose of business.

30. The Assessing Officer has claimed deduction for an amount of Rs.77,58,654/- on account of social welfare expenses for development of various facilities for public of nearby villages like construction of ponds, organizing of medical camps, promotion of education facilities, contribution to gram vikas samitees for various development works to earn goodwill in the society. The Assessing Officer rejected the explanation of the assessee and disallowed the claim of the assessee.

31. On appeal, the CIT(A) observed that there is no dispute to the genuineness of claim of expenditure i.e. incurrence of expenditure and payment thereof. The CIT(A) following the decision in the case of CIT vs. Modi Industries Ltd., 327 ITR 570, the decision of Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd., 360 ITR 714 (kar) and also the amendment in Section 37 in the Finance No.(2) Act, 2014 w.e.f. 1.4.2015, deleted the disallowance of Rs.2,68,796/-.

46. Being aggrieved, the revenue is in appeal before us.

47. We have heard the rival submissions and perused the record of the case. We find that the CIT(A) has relied on the decision in the case of Modi Industries (supra) and Hon'ble Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd (supra), wherein, it has been held that the expenditure incurred on social responsibility was laid out or expended wholly and exclusively for purposes of business. The CIT(A) has referred to the amendment made in Finance Act (No.2) 2014 w.e.f. 1.4.2015 in Section 37, wherein, it is declared that for the purposes of sub-section(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The CIT(A) has held that there was no such embargo for the preceding years. In view of above, the CIT(A) held that the disallowance cannot be sustained. In the instant case, it is submitted that CSR expenses are incurred for the welfare of local community and thereby improve corporate image of the companies incurring such expenditure. We are of the considered opinion that the CIT(A) has rightly considered the decision and deleted the addition made by the Assessing Officer and Ground No.d of appeal of the revenue is dismissed.

48. The last issue pertains to restriction of disallowance u/s.40A(3) of the Act to Rs.17,54,455/- thereby giving relief of Rs.7,02,475/- to the assessee.

49. The Assessing Officer observed that the assessee has made payments in violation of provisions of section 40A(3) of the Act as per the list enclosed in the assessment order and, therefore, disallowed Rs.17,54,455/-.

50. On appeal, the CIT(A) the assessee submitted that as per list furnished, the expenses to the tune of Rs.7,02,476/- were below as prescribed limit u/s.40A(3) of the Act. It was submitted that out of total expenses of Rs.75,10,62,825/-, as transport expenses, only Rs.24,56,931/- was paid in cash that too due to urgent requirement of transporters and the payments were genuine.

51. The CIT(A) found that only Rs.7,02,476/- paid in cash were below the prescribed limit and deleted the addition to that extent and sustained the addition for the balance amount.

52. Having heard the rival submissions, we have carefully gone through the orders of lower authorities. We find that the CITA) has allowed the deduction which are below the prescribed limit u/s.40A(3) of the Act. Before us, no plausible explanation was submitted by the ld D.R. to controvert the

above findings of the CIT(A). Hence, we uphold the order of the CIT(A) and dismiss the ground of appeal of the revenue.

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

Order pronounced on 18 /01/2018.

Sd/- sd/-

(N.S Saini) (**Pavan Kumar Gadale)**
ACCOUNTANT MEMBER **JUDICIALMEMBER**

Raipur; Dated 18 /01/2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The Appellant : DCIT 1(2), Aayakar Bhavan, Raipur
2.	The Respondent. Godawari Power & Ispat Limited, Plot No.482/2, Industrial Growth Central Phase-1, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur