

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Ramlal Negi (JM)

I.T.A. No. 3707/Mum/2008 (Assessment Year 2004-05)
I.T.A. No. 2537/Mum/2011 (Assessment Year 2005-06)

DCIT 12(2)(1)/DCIT 6(2)/ACIT-5(2) Room No. 223 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Firstsource Solutions Limited 5 th Floor, B Wing Paradigm, Mindspace Link Road, Malad (W) Mumbai-400 064.
(Appellant)		(Respondent)

I.T.A. No. 4752/Mum/2009 (Assessment Year 2004-05)
I.T.A. No. 4053/Mum/2008 (Assessment Year 2004-05)
I.T.A. No. 2658/Mum/2011 (Assessment Year 2005-06)

M/s. Firstsource Solutions Limited 5 th Floor, B Wing Paradigm, Mindspace Link Road, Malad (W) Mumbai-400 064.	Vs.	DCIT 6(2)/ACIT-5(2) Room No. 223 Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AAACI8904N

Assessee by	Shri F.V. Irani
Department by	Ms. S. Padmaja & Shri Rajesh Kumar Yadav
Date of Hearing	13.12.2017
Date of Pronouncement	31.01.2018

ORDER

Per B.R. Baskaran (AM) :-

These cross appeals are directed against the orders passed by Ld CIT(A)-5, Mumbai and they relate to the assessment years 2004-05 and 2005-06. All these appeals were heard together and hence, they are being disposed of by this common order, for the sake of convenience.

2. The assessee company is engaged in the business of IT enabled transaction processing services.

3. We shall first take up the appeal filed by the revenue for assessment year 2004-05 in ITA No.3707/Mum/08, wherein the revenue is challenging the relief of Rs.61.71 lakhs granted by Ld CIT(A) in respect of interest disallowance.

4. We heard the parties on this issue and perused the record. The facts relating to the issue are discussed in brief. The assessee claimed interest expenditure of Rs.100.10 lakhs. The AO noticed that the assessee has made following fresh investments:-

Customer Assets India P Ltd	Rs.99,95,23,000/-
Series F of convertible preferred stock of First Ring Inc. US	Rs.61,72,19,000/-

The AO took the view that the assessee has diverted interest bearing loans for making above said investments, which did not yield any income. Accordingly, he computed disallowance of proportionate amount of interest relating to the above said investments, which worked out to Rs.61,71,318/- and disallowed the same. The Ld CIT(A) deleted this disallowance and hence the revenue is aggrieved.

5. We notice that the assessee has demonstrated before Ld CIT(A) that the own funds available with it is more than the value of investments made in subsidiaries. The assessee held own funds of Rs.13000 lakhs and Rs.23580 lakhs as on 31.3.2003 and 31.3.2004 respectively. The amount of investment made in subsidiaries stood at Rs.9595.23 lakhs and 15767.42 lakhs respectively as on 31.3.2003 and 31.3.2004. Hence, as per the decision rendered by Hon'ble jurisdictional High Court in the case of Reliance Utilities & power (313 ITR 340), the presumption shall be that the assessee has used only its own funds for making investments. Further, the assessee has also contended that the subsidiary companies are also engaged in the similar line

of business as that of the assessee. Accordingly it was contended, by placing reliance on the decision rendered by Hon'ble Supreme Court in the case of S.A.Builders Ltd Vs. CIT (288 ITR 1), that there is commercial expediency in making investments and hence no disallowance was called for. We notice that the Ld CIT(A) has deleted the disallowance on account of above said reasoning.

6. Before us, the Ld D.R submitted that the Ld CIT(A) has granted relief without discussing much on the issue. On the contrary, the Ld A.R submitted that the assessee has raised valid contentions before Ld CIT(A) and accordingly he has granted relief to the assessee.

7. Having heard rival submissions, we are of the view that the order passed by Ld CIT(A) on this issue does not call for any interference, since the own funds available with the assessee is more than the value of investments made in subsidiaries and further, there is commercial expediency in making investments, since the subsidiary companies are also said to be engaged in the similar line of business activity. Accordingly we uphold the order passed by Ld CIT(A) on this issue.

8. We shall now take up the appeal filed by the assessee for Assessment year 2004-05 in ITA No.4053/Mum/08.

9. The first issue relates to the disallowance of interest expenses. This ground consists of three parts. The first relates to the incorrect mentioning of relief granted to the assessee, i.e., Even though the Ld CIT(A) had deleted the interest disallowance, yet he has erroneously mentioned the amount of relief as Rs.36,93,444/- instead of Rs.61,71,318/-. Hence the assessee has raised a ground pointing out the said error. However, at the time of hearing, the ld A.R submitted that the Ld CIT(A) has corrected the error in an order passed u/s 154 of the Act. Accordingly this ground of the assessee becomes infructuous.

10. The second part relates to the non-adjudication of issue relating to allocation of interest expenditure between STP unit and non-STP unit. The Ld

A.R submitted that the Id CIT(A) did not adjudicate this ground initially and hence this ground was raised. However, the Ld CIT(A) has dealt with the same in the rectification order passed u/s 154 of the Act and he has decided the same against the assessee. Hence this ground also becomes infructuous, as the Ld CIT(A) has adjudicated the same in the rectification order.

11. The third part of the ground relates to the disallowance of interest on delayed payment of P.F. The Ld A.R did not press this ground and hence this ground is dismissed as not pressed.

12. The second ground relates to the disallowance made u/s 40A(2)(b) of the Act. This ground also consists of two parts. The first part relates to the payments made to M/s ICICI Bank and the second part relates to the rental payments made to M/s Customer Assets India P Ltd.

13. The assessee made following payments to M/s ICICI Bank Ltd:-

Common Corporate Expenses	Rs.47,50,000/-
Software and Professional Fees	Rs. 6,00,000/-
Repairs and Maintenance	Rs. 9,43,245/-

The assessee submitted that it had utilized the infrastructure facilities belonging to M/s ICICI Bank Ltd, a group company, and hence the proportionate cost has been recovered by its group company. The AO noticed that these two entities did not have any written agreement for sharing of facilities. Since ICICI Bank Ltd is related to the assessee, the AO disallowed 50% of the above said expenses by invoking provisions of sec. 40A(2)(a) of the Act. The Ld CIT(A) also confirmed the same.

14. The Ld A.R submitted that the assessee and M/s ICICI Bank Ltd fall within same bracket for taxation and hence the transaction is revenue neutral. Accordingly, by placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Indo Saudi Services (Travel) P Ltd (310 ITR 306), the Ld A.R submitted that the disallowance u/s 40A(2)(a) is not called

for. He further submitted that the AO has made the disallowance without showing that the payments made were in excess of Fair Market Value. In the alternative, he submitted that the disallowance, if any, sustained would also qualify for deduction u/s 10A of the Act.

15. We heard Ld D.R on this issue. There is no dispute with regard to the fact that the payments have been made to a sister concern named M/s ICICI Bank Ltd. The contention of the Ld A.R is that both the assessee and M/s ICICI Bank Ltd are liable to pay tax at the same rate and hence the transaction is revenue neutral. Accordingly it was contended that no disallowance u/s 40A(2)(a) is called for as per the decision of Hon'ble jurisdictional High Court rendered in the case of M/s Indo Saudi Services (Travel) P Ltd (supra). There is merit in the submissions of the assessee. However, the above said claim of the assessee has not been examined by the tax authorities. Hence, for the limited purpose of verifying as to whether the assessee and M/s ICICI Bank Ltd are paying tax at same rate, i.e., whether the transaction is revenue neutral or not, we restore this issue to the file of the assessing officer. If he is satisfied that the impugned transactions are revenue neutral, we direct the AO not to make any disallowance u/s 40A(2)(a) of the Act. If he is not satisfied so, he may make appropriate decision in accordance with the law, after affording adequate opportunity of being heard to the assessee. The AO should also consider the claim of the assessee that the amount disallowed would be eligible for deduction u/s 10A of the Act, if he is not satisfied with the original claim.

16. The second part of the disallowance relates to disallowance of 20% of rental expenses. The AO noticed that the assessee has paid rent of Rs.81.90 lakhs to its sister concern named M/s Customer Asia India P Ltd. Since the assessee did not show that the rent was paid at market rates, the AO disallowed 20% of the rental expenses, referred above. The Ld CIT(A) also confirmed the same.

17. We heard the parties on this issue. The Ld A.R submitted that M/s Customer Asia India P Ltd had entered into a rental agreement with original lessor. Since the assessee was in need of premises, it entered into an agreement with M/s Customer Asia India P Ltd. The Ld A.R submitted that the assessee has paid same rent, as was payable by M/s Customer Asia India to the original lessor and hence there is no excess payment of rent. Accordingly he submitted that the rent was paid at market rates and hence no disallowance u/s 40A(2)(a) is called for.

18. We heard Ld D.R on this issue and perused the record. The main contention of the assessee is that it has paid rent at the same rate at which it is payable by M/s Customer Asia India to the original lessor. The Ld A.R submitted that the assessee has submitted both the agreements before the AO, but the AO has made the disallowance without verifying the assessee's claim. We find force in the arguments of the Ld A.R. If the assessee is paying rent at the very same rate at which it was payable to the original lessor by M/s Customer Asia India, then the question of payment of excess rent does not arise. We notice that the AO has not examined the relevant agreements in this regard. Hence, for the limited purpose of verification of this claim of the assessee, we restore this issue to the file of the AO. If the AO is satisfied that there is no excess payment, then no disallowance out of rental expenditure is called for. If the AO is not satisfied, he may take appropriate decision in accordance with the law. The assessee has also raised certain other grounds, viz., the assessee and M/s Customer Asia India fall under same bracket and hence no disallowance u/s 40A(2)(a) is called for. The disallowance, if any, would also qualify for deduction u/s 10A of the Act. The AO is directed to consider these alternative contentions also, if he is not satisfied that there was no excess rent payment.

19. Ground No.3 urged by the assessee relates to disallowance of Provision of various expenses. The assessee created provision for following outstanding expenses and claimed the same as deduction:-

(a) Upkeep charges & Maintenance	-	Rs. 4,00,948/-
(b) Travelling and Conveyance	-	Rs. 6,47,000/-
(c) Computer expenses	-	Rs. 5,45,000/-
(d) Legal and Professional expenses	-	Rs.32,00,000/-
(e) Electricity, water and power consump.	-	Rs. 6,60,000/-
(f) Recruitment and training exp.	-	Rs.42,59,910/-
(g) Car hire charges	-	Rs. 4,70,000/-

The AO took the view that mere provision made by the assessee for expenses is not allowable unless it is shown that the liability has accrued during the year under consideration. In the absence of further details forthcoming from the assessee, the AO disallowed the above said claim. The Ld CIT(A) also confirmed the same.

20. The Ld A.R submitted that these expenses have accrued during the year under consideration and hence the provision was created by making reliable estimates. In the subsequent years, these expenses have been paid and the un-paid amount has been taken to income account. He submitted that these provisions were made on account of accounting compulsions under matching principle and hence the same is allowable as deduction. In this regard, the assessee relied on following case law:-

- (a) Bharat Earth Movers (245 ITR 428)(SC)
- (b) CIT Vs. United Motors (India) Ltd (181 ITR 347)(Bom)
- (c) Rotork Controls India (P) Ltd Vs. CIT (180 Taxman 422)(SC)
- (d) CIT Vs. Nokia Siemens Networks India (14 taxmann.com 84)(Kar)

21. The Ld D.R, on the contrary, submitted that the assessee has not shown that the liability in respect of above said expenses has accrued during the year under consideration.

22. We heard the parties on this issue and perused the record. There should not be any dispute that the accounting principles mandates that all known provisions have to be provided for, even if the exact amount of liability

is not known. A reliable estimate is required to be made for making such provisions. It is the case of the assessee that these provisions relate to expenses of routine nature and such kind of provisions are made year after year. The actual payments made against these provisions are usually debited to the concerned Provision account and the balance, if any, shall be transferred to the Profit and Loss account.

23. Even though the AO has observed that the assessee did not furnish relevant details, yet it is the contention of the assessee that all the relevant details were furnished to him, vide letter dated 22-12-2006. Since the provision is made on the basis of estimates, the amount of actual payment may differ in the normal course. But the said difference should not bar deduction of the provision so made, so long as it is a liability that has already accrued as at the year end. We notice that the AO did not examine the details furnished by the assessee in order to demonstrate that the concerned liability did not accrue as at the year end. Hence, we have no other option, but to accept the explanations of the assessee, as the same is in accordance with the accounting principles and requirements. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the expenses relating to provisions, listed above.

24. The fourth ground relates to adhoc disallowance made out of Meeting and Seminar expenses. The assessee claimed a sum of Rs.30.11 lakhs under this head. On verification of details, the AO noticed that majority of expenses have been incurred towards "Hotel Charges". The AO disallowed 20% of the claim by observing that it cannot be verified that expenses were incurred wholly and exclusively for the purpose of business. The Ld CIT(A) also confirmed the same, but he accepted the alternative plea of the assessee that the disallowance shall be eligible for deduction u/s 10A of the Act.

25. We heard the parties on this issue. The nature of expenses being "Meeting and Seminar Expenses", the major part of expenses shall be incurred

towards hotel charges only. We notice that the assessee has furnished all the details before the AO. We further notice that the AO has made adhoc disallowance only on presumption that there may be personal element. It can be noticed that the AO has made the impugned disallowance on surmises and conjectures without showing how personal element is involved in meetings and seminars. Hence we do not find any justification in making adhoc disallowance of 20% from this expenditure. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the impugned disallowance.

26. The fifth ground urged by the assessee relates to the adhoc disallowance of 20% made out of Staff welfare expenses. The assessee claimed a sum of Rs.183.99 lakhs towards staff welfare expenses. The assessee furnished relevant details to the AO. However, the AO noticed that these expenses were incurred in respect of Canteen, food, staff medical benefit. Further a sum of Rs.19.95 lakhs has been described as "Others". Accordingly, the AO took the view that it cannot be verified that these expenses have been incurred wholly and exclusively for the purpose of business. Hence he disallowed 20% thereof. The Ld CIT(A) confirmed the disallowance, but he accepted the alternative prayer of the assessee that the amount so disallowed shall be eligible for deduction u/s 10A of the Act.

27. We heard the parties on this issue. We notice that the assessee has given details of expenses except for a sum of Rs.19.95 lakhs. Hence, we are of the view that the disallowance, if any, should be restricted to that portion for which no detail was given. Accordingly we are of the view that no disallowance is called for from out of expenses for which details were given. We are also of the view that the disallowance @ 20% is also on the higher side. Accordingly we modify the order passed by Ld CIT(A) on this issue and direct the AO to restrict disallowance to 10% of Rs.19.95 lakhs, for which details were not given. However, this disallowance shall be eligible for deduction u/s 10A of

the Act as held by Ld CIT(A), since the said decision has not been challenged by the revenue.

28. The next issue relates to the interest income and miscellaneous income assessed under the head "Income from other sources", instead of business income. The AO noticed that the assessee has shown interest income of Rs.179.30 lakhs and miscellaneous income of Rs.1.27 lakhs. Since the assessee did not furnish details thereof, the AO assessed both the income under the head "Income from Other sources". The Ld CIT(A) also confirmed the same.

29. The case of the assessee is that it has earned interest income by deploying its surplus funds in its subsidiaries and deposits. Accordingly, by placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Green Infra Ltd (392 ITR 7), the Ld A.R submitted that the interest income is required to be assessed as business income.

30. We heard Ld D.R and perused the record. It is the case of the assessee that it has submitted relevant details relating to interest income before the AO. However, the AO observes that the assessee did not furnish any details. In any case, the Hon'ble Bombay High Court has held in the case of Green Infra Ltd (supra) that interest income earned on deposit of surplus funds on short term fixed deposits is taxable as business income. It can be noticed that the questions that (a) the impugned deposits are short term or long term and (b) they are made out of surplus funds or not; have not been examined. Under these set of facts, we are of the view that this issue requires fresh examination at the end of AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine this issue afresh in the light of decision rendered by Hon'ble Bombay High Court in the case of Green Infra Ltd (supra).

31. The seventh ground urged by the assessee relates to the adjustment of profits of STP units against loss of non-STP units. During the year under

consideration, the assessee declared profit of Rs.628.94 lakhs from STP units and loss of Rs.185.54 lakhs from non-STP units. The assessee claimed deduction u/s 10A in respect of entire profit of STP units. The AO, however, took the view that the loss from non-STP units has to be set off against profits from STP units. Accordingly he set off the loss and allowed deduction u/s 10A. The Ld CIT(A) also confirmed the same.

32. We heard the parties on this issue. This issue has since been decided in favour of the assessee by Hon'ble Bombay High Court in the case of CIT Vs Black & Veatch Consulting P Ltd (348 ITR 72) and by Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd (391 ITR 274). Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 10A of the Act without setting off of loss from non-STP units.

33. In Ground No.8, the assessee contends that the Ld CIT(A) should have directed the AO to allow deduction u/s 10A as claimed by the assessee. This ground, being general in nature, does not require any adjudication.

34. Ground No.9 relates to set off of brought forward losses of earlier assessment years. The Ld CIT(A) did not adjudicate the same in his original order, but dealt with the same in the rectification order passed u/s 154 of the Act. Hence this ground of the assessee shall become infructuous.

35. The assessee has urged two additional grounds. The first additional ground relates to the alternative prayer of the assessee in respect of disallowance relating to "Provision for expenses". In the alternative prayer, it is stated that the expenses should be allowed under payment basis, if the disallowance of provision was confirmed. In the earlier paragraphs, we have deleted the disallowance of provision for various expenses. Hence, this alternative prayer of the assessee shall not survive.

36. The second additional ground of the assessee relates to the deduction claimed u/s 10A of the Act. Under this ground, it is contended that the

deduction u/s 10A shall be allowed qua unit wise instead of aggregating profits/losses of all eligible units. This issue has been decided in favour of the assessee by Hon'ble Bombay High Court in the case of Hindustan Unilever Ltd Vs. DCIT (325 ITR 102) and by the Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd (391 ITR 274). Accordingly we direct the AO to compute deduction u/s 10A qua unit-wise.

37. We shall now take up the appeal filed by the assessee in ITA No.4752/Mum/2009 challenging the order dated 11-06-2009 passed by Ld CIT(A)-V, Mumbai for assessment year 2004-05 u/s 154 of the Act.

38. The first and second ground pertains to the issue relating to the disallowance of interest expenditure of Rs.36.93 lakhs u/s 14A of the Act. We have noticed earlier that the assessee had incurred interest expenses of Rs.100.10 lakhs. The AO noticed that the assessee has made investments in two of its subsidiary companies. Hence the AO disallowed proportionate amount of interest, which was worked out to Rs.61.71 lakhs as relatable to investment made in subsidiaries. The AO also further disallowed a sum of Rs.1.46 lakhs as interest relatable to delayed payment of P.F. The balance amount of interest of Rs.36.93 lakhs was treated by the AO as relatable to STP units. Since the profit from STP units was exempt, the claim for deduction u/s 10A got reduced by Rs.36.93 lakhs, i.e., to the extent of interest allocated to STP units.

39. The Ld CIT(A) upheld the decision of the AO by observing that the provisions of sec. 14A will come into play, since the income of STP units are not includible in the total income. Accordingly he held that the disallowance u/s 14A should be computed in accordance with Rule 8D. Accordingly he directed the AO to compute disallowance as per the provisions of Rule 8D.

40. We heard the parties on this issue and perused the record. We notice that the AO has allocated a sum of Rs.36.93 lakhs, out of aggregate interest expenses of RS.100.10 lakhs, as interest relatable to STP units. We notice that

the AO has not given any basis for arriving at the figure of Rs.36.93 lakhs. Since the relevant borrowed funds are known, it is possible to be ascertain the user of borrowed funds. If the borrowed funds were used for STP units, then the concerned interest expenditure is required to be charged to STP units only. We notice that neither the assessee has furnished the details of user of borrowed funds nor the tax authorities have examined the same.

41. Before us, the Ld A.R argued that the Ld CIT(A) has exceeded his jurisdiction u/s 154 of the Act in invoking provisions of sec. 14A of the Act in the rectification proceedings. In the alternative, it was contended that the disallowance u/s 14A is not warranted, when the assessee has not earned any exempt income.

42. We heard Ld D.R on this issue and perused the record. In our view, the Ld CIT(A) has misdirected himself by referring to the provisions of sec. 14A of the Act in order to confirm the interest expenditure allocated to STP units. First of all, the AO did not disallow the impugned amount of Rs.36.93 lakhs as presumed by Ld CIT(A) and hence the question of invoking provisions of sec. 14A does not arise. What AO has done is to allocate a part of interest expenditure towards STP units, which in turn, will reduce the amount allowable u/s 10A of the Act. We have noticed that the manner of allocation of interest expenditure shall be on the basis of user of borrowed funds between STP units and non-STP units. We have also noticed that the details relating to user of borrowed funds have not been brought on record. Hence we are of the view that this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the same afresh in the light of discussions made supra.

43. The third ground urged by the assessee relates to the disallowance made u/s 40A(2)(b) of the Act and its consequential enhancement of deduction u/s 10A by the amount of disallowance. In the preceding paragraphs, we have

restored these issues to the file of the AO with certain directions. Hence both the issues urged in this ground are also restored to the file of the AO. In any case, the Ld A.R contended that the claim of the assessee is supported by the decision of Hon'ble Bombay High Court rendered in the case of CIT Vs. Gem Plus Jewellery India Ltd (330 ITR 175), which shall be followed by the AO in the set aside proceedings.

44. We shall now take up the appeal filed by the revenue for assessment year 2005-06 in ITA No.2537/Mum/2011. The Ld CIT(A) had restored the following issues to the file of the AO for verification and for taking fresh decision:-

- (a) Reversal of bonus of Rs.33,95,454/- not allowed as deduction u/s 43B of the Act.
- (b) Assessee's claim that the AO erred in not computing deduction u/s 10A of the Act for each unit separately and not from the gross total income of the assessee.
- (c) Set off brought forward business loss pertaining to previous year.

The grievance of the revenue is that the Ld CIT(A) has exceeded his jurisdiction by restoring the issue to the file of the AO.

45. We heard the parties on this issue and perused the record. We notice that the claim of the assessee can be allowed only if a proper verification of facts relating to the issue was carried out. Hence Ld CIT(A) was constrained to restore the issues to the file of the AO for carrying out verification of facts. Accordingly we uphold his view and accordingly, the irregularity, if any stands rectified by our action of confirming the restoration of issues.

46. We shall now take up the appeal filed by the assessee for AY 2005-06 in ITA No.2658/M/2011. The first issue relates to the allocation of expenses to STP units. The AO noticed that the assessee has declared aggregate income of Rs.297.49 lakhs from non-STP unit. The nature of income so declared is Gains/loss on sale of investment, interest income, Foreign exchange difference

etc. Thus the AO noticed that the assessee has carried on business activities like Training and processing, income from call centre etc., in its STP units and no such business activities have been carried on non-STP unit. However the assessee had claimed a sum of Rs.550.50 lakhs as expenditure in non-STP unit. Hence the AO took the view that the above said expenses are relatable to STP units and accordingly did not allow the same against non-STP unit. The Ld CIT(A) also confirmed the same.

47. We heard the parties on this issue. We notice that the AO has drawn inferences while deciding this issue, i.e., the AO has taken the view that the non-STP unit did not carry on any business activity and hence all the expenses should be considered as related to STP units. This does not appear to be a correct reasoning. The Hon'ble Bombay High Court has held in the case of Zandu Pharmaceutical Works Ltd (Income tax Appeal No.8 of 2007 dated 12-09-2012) has held that there must be direct nexus between the profits and gains of industrial undertaking and the expenses which are sought to be apportioned/attributable to it. Neither the AO nor the Ld CIT(A) has examined the nature of expenses and its nexus between STP unit or non-STP unit. Under these set of facts, we are of the view that this issue requires fresh examination at the end of the assessing officer. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the assessing officer with the direction to examine the nexus between the expenditure and the STP or non-STP units. The assessee is also directed to furnish all the details that may be called for by the AO in this regard. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

48. The next ground urged by the assessee relates to the interest income, foreign exchange loss, miscellaneous income etc. The AO has assessed the same under the head Income from other sources as against the claim of the assessee that they are business income. Identical issue was considered by us in the preceding paragraphs while dealing with the appeal of the assessee

relating to AY 2004-05 and we have restored this issue to the file of the AO with the direction to examine this issue afresh in the light of decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. Green Infra (392 ITR 7). Consistent with the view taken in AY 2004-05, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with identical directions.

49. The next ground urged by the assessee relates to the nature of legal and professional expenses of Rs.22.40 lakhs. The tax authorities have held it to be capital in nature. The AO noticed that the assessee has taken demand draft for a sum of Rs.16.19 lakhs in favour of Superintendent of stamps. Since it was paid towards stamp duty, the AO held that it has been incurred for capital investment. Accordingly he disallowed the above said amount proportionately between 10A and 10B STP units. The AO further noticed that the assessee has incurred a sum of Rs.6,20,650/- towards L & P Charges. However the assessee did not furnish the purpose for which these payments were made. Hence the AO disallowed the same. The Ld CIT(A) also confirmed both the disallowances.

50. We have heard the parties on this issue. Before us also, the assessee did not furnish any detail relating to these expenses. Hence we have no other option but to confirm the disallowance of Rs.22.40 lakhs referred above.

51. The next issue relates to the adhoc disallowance made out of Staff welfare expenses. The assessee claimed a sum of Rs.575.41 lakhs as Staff welfare expenses. The AO made adhoc disallowance of 20% of the expenses by observing that it is difficult to verify that these expenses have been incurred for business purposes. The Ld CIT(A) also confirmed the same.

52. We have heard the parties on this issue. In AY 2004-05, we have examined an identical issue and held that the disallowance is not called for on adhoc basis when the assessee has furnished the details. In that year we had restricted the disallowance to 10% of the expenses for which no detail was

furnished. However, during the year under consideration, the AO has not given any break up details of expenses or pointed out expenses for which no detail was given. Hence we have no other option but to delete the entire disallowance made by the AO. The order passed by Ld CIT(A) on this issue shall stand set aside.

53. The next issue relates to the adhoc disallowance made out of Meeting and Seminar expenses. The assessee has incurred a sum of Rs.49.55 lakhs under this head and the AO disallowed 20% of the same on adhoc basis by observing that these expenses cannot be verified. The Ld CIT(A) also confirmed the same.

54. Identical disallowance was made by the AO in AY 2004-05 also and we have deleted the same by observing that adhoc disallowances on surmises and conjectures should not have been made. The facts, being identical in this year, consistent with the view taken in AY 2004-05, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance.

55. The next issue relates to the disallowance made u/s 40A(2)(a) of the Act. As in AY 2004-05, the assessee had made payments to M/s ICICI Bank Ltd towards Common corporate expenses, software & professional fees, repairs and maintenance. The AO disallowed 50% of the expenses by invoking provisions of sec. 40(A)(2)(a) of the Act. The Ld CIT(A) also confirmed the same.

56. Identical disallowance was made by the AO in 2004-05 also and we have restored this issue to the file of AO for the limited purpose of verifying as to whether the assessee and M/s ICICI Bank Ltd pays tax at the same rate or not. Since the facts are identical in this year, consistent with the view taken in AY 2004-05, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with identical directions given in AY 2004-05.

57. The next issue relates to the claim put forth by the assessee to allow "Provision for expenses" on payment basis in AY 2005-06, if the disallowance of Provision for expenses is confirmed. In the preceding paragraphs, while dealing with this issue in AY 2004-05, we have held that the provision for various expenses claimed by the assessee is allowable as deduction in AY 2004-05. Hence the preset claim made by the assessee shall become infructuous and accordingly we reject the same.

58. The next issue relates to the adjustment of profit of STP unit against loss from non-STP units. We heard the parties on this issue. This issue has since been decided in favour of the assessee by Hon'ble Bombay High Court in the case of CIT Vs Black & Veatch Consulting P Ltd (348 ITR 72) and by Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd (391 ITR 274). Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 10A of the Act without setting off of loss from non-STP units.

59. The next issue relates to the claim of the assessee to allow deduction u/s 10A of the Act qua unit-wise. This issue has been decided in favour of the assessee by Hon'ble Bombay High Court in the case of Hindustan Unilever Ltd Vs. DCIT (325 ITR 102) and by the Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd (391 ITR 274). Accordingly we direct the AO to compute deduction u/s 10A qua unit-wise.

60. The last issue relates to the setting off unabsorbed depreciation pertaining to previous years from the positive income of the units eligible for deduction u/s 10A. This issue has been decided in favour of the assessee by Hon'ble Supreme Court in the case of CIT Vs. Yokogawa India Ltd (391 ITR 274) and by Hon'ble Bombay High Court in the case of Techno Tarp & Polymers P Ltd (ITA No.2134 of 2013). Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to compute deduction u/s 10A/10B without adjusting brought forward depreciation.

61. In the result, both the appeals of the revenue are dismissed. All the three appeals of the assessee are treated as allowed.

Order has been pronounced in the Court on 31.01.2018.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 31/01/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

PS