

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 5807/Del/2015
Asstt. Year: 2010-11

Neel Metal Products Ltd. 601, Hemkunt Chamber, 89, Nehru Place New Delhi – 110019 PAN AABCN6364Q	Vs.	Addl. CIT Range-13 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Suresh Malik, CA
Department by :	Shri Ved Prakash Mishra, Sr. DR
Date of Hearing	17/10/2018
Date of pronouncement	31/10/2018

ORDER

PER L.P. SAHU, A.M

This is an appeal filed by the assessee against the order of Ld. CIT(Appeals)- 42 New Delhi vide order dated 24.8.2015 pertaining to assessment year 2010-11 on the following ground of appeal :-

- (a) "On the facts and in the circumstances of the case, the learned CIT(Appeals) has erred, both on the facts and in the law, in confirming the disallowance of deduction u/s 80IC of Rs. 40,50,000/- made by the Assessing Officer on account of allocation of certain indirect expenses to the eligible units of

the Assessee Company without considering the fact that these expenses were not directly or indirectly incurred for the eligible units.

(b) The appellant craves leave to amend, alter and add grounds in the appeal if need be, before the hearing.”

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing of sheet metal, components for the automobile industry and filed his return on 6th October, 2010 with a total income of Rs. 588495367/-. The assessee claimed exemption u/s 80IC of the Income Tax Act of Rs. 20,55,66,872/- resulting in a net income of Rs. 38,21,78,495/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of scrutiny proceedings, Ld. AO observed that the assessee had made a claim u/s 80IC and common expenses of Rs. 2,76,63,000/-. The common expenses include director's remuneration, audit fees and travelling expenses which were apportioned to the eligible units for deduction u/s 80IC. In this regard assessee has submitted that except all the above three expenditures, the actual expenditures have been charged to the eligible units and in respect of the common expenses, the assessee submitted that for the purpose of deduction u/s 80IC only income derived from industrial undertaking has to be reckoned in computation. As such the income and expenditure which are not directly relatable to the industrial unit cannot be ignored. But from the reply submitted by the assessee Ld. AO was not satisfied with the reply of the assessee and he concluded that the profit has not been correctly computed and actual expenses are not debited to the books of accounts of Haridwar unit and he recomputed the claim of deduction u/s 80IC and disallowed the amount of Rs. 40,50,000/- u/s 80IC adding the same as the income of the assessee. Feeling aggrieved from the order of the AO the assessee appealed before the

Ld. CIT(A) and the assessee also submitted written submissions before the Ld. CIT(A) but Ld. CIT(A) also did not accept the contention of the assessee and upheld the action of the Ld. AO . Feeling aggrieved from the order of the Ld. CIT(A) the assessee is in appeal before the ITAT.

3. Ld. AR submitted that the assessee is maintaining regular books of accounts of the Haridwar and Pantnagar unit which are eligible for deduction u/s 80IC as all the requirements for eligibility of deduction u/s 80IC of the Income Tax Act, stood satisfied. He submitted that AO was not justified to make disallowance for common expenses charged to the eligible units and he also submitted that the assessee's case is squarely covered by the decision of the coordinate bench in the case of M/s. DCW Ltd. vs. ACIT in ITA No. 5969/Mum/2008 for the assessment year 2005-06 and he also relied on the judgment of the coordinate bench in the case of ACIT vs. M/s. Accurate Transformers Ltd.

4. On the other hand Ld. DR submitted that the assessee has not allocated to the common expenses properly and assessee was also unable to give reply to the specific questions put by the AO. Therefore the lower authorities were justified to make disallowance u/s 80IC of Rs. 40,50,000/- and he also relied on the decision of the coordinate bench in the case of DCW Ltd. vs. Additional CIT, (2010) 132 TTJ 442 for the Assessment year 2003-04.

5. After hearing both the sides and perusing the entire material available on record. The assessee has relied on the decision in the case of M/s DCW Ltd. vs ACIT for the assessment year 2005-06 of the coordinate Bench, whereas the ld. DR has relied on the decision of that assessee in the case for A.Y. 2003-04. Having gone through the facts attending to the present case, we find that the aforesaid decisions relied by the both the parties are not squarely applicable to the

present case due to distinguishable features prevailing in the instant case, inasmuch as in the present case, the AO had made a specific query to furnish the report submitted under Rule 18BBB which is required for claiming deduction u/s. 80IC of the Act. However, the assessee, in order to examine the genuineness of computation of deduction u/s. 80IC, failed to furnish the requisite details/report as asked for by the Assessing Officer. In our opinion, before considering the application of two decisions of Tribunal as relied by both the parties, it is necessary on the part of the assessee to furnish all the details /information as required by the AO pertaining to computation of deduction u/s. 80IC. We, therefore, remit the matter back to the file of AO to decide the same afresh after giving reasonable opportunity of being heard to the assessee. The assessee is directed to furnish complete details/information as required by and to the satisfaction of the AO along with allocation of common expenses to the eligible and non-eligible units, so as to examine the genuineness of computation of deduction u/s. 80IC made by the assessee in accordance with law.

6. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31/10/2018.

sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Dated: 31/10/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi