

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR , AM

आयकर अपील सं./ ITA No. 624/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT Circle, Parwanoo Himachal Pradesh	बनाम	M/s Jai Jawala Steels Pvt. Ltd. VII, Sansiwala, PO- Barotiwala, Solan Himachal Praedesh
स्थायी लेखा सं./PAN No: AABCJ4616K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. S.C. Gupta
Shri. A.K. Tewary
Shri. Naresh Kumar Gupta
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta
सुनवाई की तारीख/Date of Hearing : 29/08/2018
उदघोषणा की तारीख/Date of Pronouncement : 29/10/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M.:

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A), Shimla, H.P. dt. 20/02/2018.

2. In the present appeal Revenue has raised the following grounds:

1. On the facts and in the circumstances, the Ld. CIT(A) has erred in deleting the addition of Rs. 45,20,667/- as unaccounted profit out of unaccounted production of finished products.
2. On the facts and in the circumstances, the Ld. CIT(A) has erred in deleting the addition of Rs. 88,36,165/- as unaccounted investment for unaccounted production of finished goods.
3. On the facts and in the circumstances, the Ld. CIT(A) has erred in providing deduction under section 80IC of the Income Tax Act on the disallowance of interest income received by the assessee which was not disclosed by the assessee in P&L Account.

3. Ground 1 & 2 are being taken up together.

4. The brief facts relating to the issues under consideration are that the assessee company is a steel Re-Rolling Mill engaged in manufacturing of iron and Steel Products viz Structural Steel like angles, channels, flats, joists, beams etc. During the assessment proceedings, the Assessing officer asked the assessee to furnish details of daily production of finished goods as well as the details of the manufacturing process involved. The Assessing officer further observed that the amount of electricity consumed was directly related to the production of finished goods. In order to co-relate the consumption of electricity vis-à-vis production shown, the Assessing officer gathered information regarding the consumption of electricity from the Electricity Board. The Assessing officer analyzed the consumption data of electricity vis-a vis the production of finished goods and observed that there were wide variation in ratio of electricity units consumed to per metric tons of finished goods produced during the year. He observed that the electricity consumption pmt of finished goods varies from in a range as per the chart submitted before the Assessing Officer as well as the CIT(A). He further observed that on some days, electric units consumed were very low whereas finished goods produced were very high giving a very low value of electric units consumed to per ton of finished goods, whereas on some other days, electric units consumed were very high whereas the finished goods produced were very less giving a very high value of electric units consumed per metric unit of finished goods. He further observed that even on some days though there was electricity consumption yet no

production was shown. He further noted that otherwise on other days, there was also a balance and consistency in consumption of electric units vis-a-vis production of finished goods. He, therefore, observed that it indicated that the daily production recorded by the assessee of the finished goods was not correct and, hence, not reliable. He observed that the data relating to the daily production had been maintained as per actual production. When confronted in this respect, the assessee explained that the consumption of electricity was dependent on various factors as detailed in his reply which has been reproduced by the Assessing officer in the assessment order. The Assessing officer, however, was not satisfied with the above reply of the assessee. He ultimately held that the assessee company was involved in unaccounted production of finished goods which resulted in unaccounted sales and purchases. He, therefore, held that the sale and purchase figures in the books of account of the assessee were not correct and he accordingly rejected the books of account of the assessee by invoking the provisions of section 145(3) of the Income-tax Act, 1961 (in short 'the Act') and proceeded to frame the assessment in the manner as provided u/s 144 of the Act. He thereafter estimated the income of the assessee on the basis of electric units consumed for 12 months as per chart reproduced in the assessment order. He compared the same with that shown in the books of account of the assessee and estimated the unaccounted production for each month. Thereafter, on the basis of average sales rate, the value of total unaccounted production was estimated in monetary terms and then adopting the

gross profit rate shown by the assessee, the unaccounted profit out of the unaccounted production was worked out. Secondly, the peak unaccounted production for the relevant month was determined and by multiplying the average sale rate of finished goods, the unaccounted investment was worked out. The Assessing officer in this way worked out the total unaccounted investment of the assessee in the unaccounted production at Rs.88,36,165/- and Rs. 45,20,667/- being unaccounted profit out of unaccounted production and added back the same to the total income of the assessee.

5. Being aggrieved from the above order of the Assessing officer the assessee preferred appeal before the CIT(A). The Ld. CIT(A) deleted the addition based on the developments took place subsequent to the passing of the above stated impugned assessment order, a detailed study was carried out by a Committee headed by the Additional Commissioner of Income Tax, Range, Mandi, Gobindgarh having all the Assessing officers of the Range as its members. The committee was assisted by the experts from the NISST (National Institute of the Secondary Steel Technology) and also the industry representatives. On the basis of the report of the committee, it was decided that if the variation in the consumption of the electricity is within the range of 15% of the yearly average consumption of power, the book results should be accepted.

6. Ld. Counsel for the Assessee, relying upon the report of the Committee constituted by the Principal Commissioner of Income Tax, Patiala argued that he was covered on the issue of production as

decided by the Committee. The assessee was entitled to benefit of 15% variation in consumption of electricity per metric ton of finished goods produced from the average worked out on yearly basis and the variation up to 15% would not warrant any adverse cognizance.

7. This Tribunal vide its common order dated 14.2.2017, passed in the case of M/s Modi Oil & General Mill, Mandi Gobindgrh and Others in ITA No. 149/Chd/2016 and in ITA No. 662/Chd/2016 in the case of M/s.Unipearl Alloys, observing that consequent to the report of the Committee constituted by the Principal Commissioner of Income Tax, Patiala certain internal guidelines regarding acceptability of variation upto 15% have been issued and further that no additions have been made on similar issue in subsequent years by the Assessing officer, has remanded the matter to the Assessing officer with a direction to decide the issue afresh in accordance with law in the light of the internal guidelines issued by the Principal Commissioner of Income Tax, Patiala.

8. In the instant case, the Ld. CIT(A) after examining in detail the table after considering variation of 7.5% for different months, examined the finished goods produced, calculating the difference in production in MT and also the difference in production in percentage categorically held that the assessee falls within the accepted range of variation and therefore no interference with the book result is warranted. It was also held by the Ld. CIT(A) that since the ground relating to unaccounted production stands allowed the

consequential addition made under unexplained investment would also be deemed to have been allowed.

9. After hearing both the parties and going through the issues involved in the case, considering the facts and circumstances and since the facts and issues involved in all the other captioned appeals are identical, and in view of our similar findings given by this Tribunal we hereby decline to interfere with the order of the Ld. CIT(A).

10. In the result, appeal of the Revenue on this ground is dismissed.

11. Ground No. 3 deals with the deduction of 80IC on the interest received by the assessee.

12. Brief facts of the case are that the Assessing Officer observed that the assessee has received interest of Rs. 508862/- which has been set off against interest expenses and P&L Account. This amount pertains to the interest of Rs. 377740/- earned from the HPSEB on the security deposit given, and interest earned on FDRs kept with SBI against the bank guarantee and also the interest on the FDR kept with sales tax department. The Ld. CIT(A) confirmed the disallowance made by the Assessing Officer. The resultant being increased in the profits of the Company. The Ld. CIT(A) allowed the deduction under section 80IC of the Act based on the increased profits and relied on the CBDT Circular No. 37 2016 dt. 02/11/2016 wherein it was directed that the deduction under Chapter VI are admissible on the profits enhanced by any disallowances.

13. Before us, the Ld. DR relied on the orders of the Assessing Officer and Ld. AR relied on the CBDT Circular.

14. Since the decision of the Ld. CIT(A) is rightly based on the directions issued vide the circular mentioned above, we hereby decline to interfere with the order of the Ld. CIT(A).

15. In the result, appeal of the Revenue on this ground is dismissed.

Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
AG
Date: 29/10/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File