

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'A', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA Nos. 1530, 1531 & 1532/Del/2012  
Assessment Years: 2005-06, 2006-07 & 2007-08**

ACIT, Central Circle-22, New Delhi  <b>(Appellant)</b>	<b>vs.</b>	Accurate Transformers Ltd., 8, Local Shopping Centre, II/III Floor, Vardhman Siddharth Plaza, Savita Vihar, New Delhi PAN - AACCA7126L <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Banwari Lal, CIT/DR
<b>Respondent by</b>	None

<b>Date of Hearing</b>	11.12.2018
<b>Date of Pronouncement</b>	08.01.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

These three appeals have been filed by the Revenue against separate orders passed by the Id. CIT(A)-III, New Delhi dated 17.01.2012, 30.01.2012 and 31.01.2012 respectively for the assessment years 2005-06, 2006-07 and 207-09. The grounds raised in these appeals read as under :

**Grounds raised in A.Y. 2005-06:**

- “1. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.11,14,719/- made by the Assessing Officer on account of speed money.*

2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.6,00,000/- made by the Assessing Officer on account of unvouched expenses.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs.1,55,96,815/- made by the Assessing Officer u/s. 80IC of the Income Tax Act, 1961.*
4. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in allowing the additional deduction of Rs.87,270/- in respect of scrap sales declared by assessee and Rs.4,86,408/- in respect of addition on bogus purchase without appreciating the fact that the same were not claimed during the assessment proceedings.*
5. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

Grounds raised in A.Y. 2006-07:

1. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the Assessing Officer was not justified in estimating speed money expenses at Rs.97,16,000/-.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in restricting the addition to Rs.1,01,71,831/- out of additions of Rs.1,23,49,264/- made by the A.O. on account of bogus purchase.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.7,00,000/- made by the A.O. on account of unvouched business expenses.*
4. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowances of Rs.2,26,99,226/- made by the Assessing Officer u/s. 80C of the Income Tax Act, 1961.*

5. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in allowing the additional deduction of Rs.10,47,900/- and Rs.24,17,841/- u/s. 80IC out of additional income declared by the assessee on account of scrap sale of Dehradun and Haridwar Unit.*
6. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

Grounds raised in A.Y. 2006-07:

1. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,05,61,660/- made by the Assessing Officer on account of unaccounted income from scrap sales.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the Assessing Officer was not justified in estimating speed money expenses at Rs.1,08,75,000/-.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.7,00,000/- made by the A.O. on account of disallowance unvouched business expenses.*
4. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowances of Rs.3,54,86,456/- made by the Assessing Officer u/s. 80IC of the Income tax Act, 1961.*
5. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in deleting the amount of Rs.1,75,00,000/- by holding that the same was included twice for the purpose of computing the total income.*

6. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in allowing the additional deduction of Rs. 26,78,166/- on account of excess purchase of Dehradun Unit and Rs. 21,77,659/- of Hardwar Unit under section 80IC of the Income tax Act, 1961.*

7. *On the facts and circumstances of the case, the CIT(A) has erred in law and on facts in restricting the addition to Rs. 78,82,615/- out of addition of Rs. 1,44,66,000/- made by the Assessing Officer on account bogus purchases.*

8. *The order of the CIT(A) is erroneous and is not tenable on facts and in law.*

2. From the above grounds of appeal, it emerges out that most of the issues involved in all these appeals pertaining to same assessee, are common, the same were heard together and are being disposed of by the consolidated order for the sake of convenience and brevity. The ld. DR agreed that the decision on a particular issue shall apply mutatis mutandis to the common issues involved in each of these appeals. We take up the facts from appeal for the assessment year 2005-06.

ITA No. 1530/Del/2012 (A.Y. 2005-06:

3. The brief facts of the case are that a search and seizure action u/s. 132 of the IT Act was carried out in Accurate Group of cases on 26.07.2006. Notice u/s. 153A was issued and served on the assessee on 26.03.2007 and other statutory notices were issued to the assessee from time to time. The assessee

company is engaged in the business of manufacturing of transformers and trading of various items. The transformers manufactured by the assessee are mainly supplied to various state Electricity Boards. During the course of search proceedings, the assessee had disclosed the amount of Rs.31,00,000/- as undisclosed income for the assessment year 2005-06 and in the return of income, the assessee has disclosed Rs.40,77,963/- as additional income, which was the amount of scrap sales and on the additional surrender, the assessee had not claimed deduction u/s. 80IC from the eligible units. During the course of assessment proceedings, the Assessing Officer observed that the assessee has declared a sum of Rs.40,77,963/- on account of unaccounted scrap sales on the basis of seized documents as per Annexure A2/part-2 and A-2/Part B-7. From the seized documents, it was noticed that there were other evidences of scrap sales made during the year. In this regard, the assessee was asked to reconcile from the surrendered made with various documents. The assessee filed revised chart of scrap sales and showed unaccounted scrap sales as under :

B-2/A-2/page-1	55,61,603/-
B-2/A-2/page 10	87,270/-
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	56,48,873/-
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The difference of scrap sales disclosed in the return of income filed u/s. 153A and unaccounted scrap sales as per above revised working, the resultant figure of Rs.15,70,910/- was added to the total income of the assessee.

4. The Assessing Officer further observed from the revised chart submitted that the assessee has admitted that the purchase of Rs.4,86,408/- from M/s. R.K. Enterprises is bogus. Accordingly, bogus purchase, as above, was added to the total income of the assessee.

5. The Assessing Officer further noticed that the main business of the assessee is manufacture and supply of transformers. From the seized documents, it was noticed that various details of payments were made at various stages of execution of orders, release of the order, inspection stage, passing of bills, release of payments etc. It was noticed that payment from 0.8% to 2.58% of the value had been made in cash as bribe/speed money. There were evidences of payment of speed money of Rs.10 lacs each at many instances was noticed. In this regard, the assessee submitted that these cash payments have been generated from the surrendered amount made in the group cases. He also furnished a consolidated utilization chart which contained various details and reflecting a sum of Rs.2,13,43,320/-. Further, the assessee again furnished revised chart increasing the amount to Rs.2,33,04,482/- as per Annexure A submitted before the Assessing Officer. The Assessing Officer observed that the assessee is making payments of such speed money out of books and the assessee did not provide the details of persons to whom such amounts were paid. From the utilization chart, it was noticed that the assessee has admitted a sum of Rs.47,53,926/- towards the payment of bribe/speed money to various persons. It was also the submission of the assessee that the speed money/bribe as noted above of Rs.47,53,926/- was paid out of the money shown to have been spent on bogus purchases and

unaccounted scrap sales worth Rs.4,86,408/- and Rs.56,48,873/- respectively, totaling to Rs.61,35,281/-. However, the Assessing Officer has calculated the payment of bribe/speed money to Rs.72,50,000/- @ 0.75% of the turnover made of Rs.96.67 crores against supply to various State Electricity Board. Therefore, the Assessing Officer made addition of difference amount of Rs.11,14,719/- to the total income of the assessee.

6. The Assessing Officer also noted that the assessee has recorded various transactions on seized materials but was unable to explain each and every entry. In spite of repeated requests, the assessee did not produce books of account, bills and vouchers. Therefore, the Assessing Officer doubted the genuineness of the expenditure made by the assessee and disallowed lump sum amount of Rs.6,00,000/- as unvouched business expenses and added the same to the total income of the assessee.

7. The Assessing Officer also noticed that the assessee claimed deduction u/s. 80IC of Rs.2,65,43,978/- from gross total income of Rs.3,14,70,845/-. The assessee had eligible and non-eligible units. He had two units which are eligible for deduction u/s. 80IC. One is situated at plot No. 2, Sector 8A Ranipur District Daridwar and claimed deduction of Rs.37,833/- on total sales of undertaking of Rs.1.39 crores, which was newly established and submitted the audit report in form No. 10CCB separately. Other unit is suited at 1394/2M, Langha Road, Dehradun and has shown to have claimed net profit of Rs.2,65,06,145/- u/s. 80IC on a turnover of Rs.37.37 crores. The assessee

submitted separate P & L account, balance sheet and audit report in Form No. 10CCB. The details of income and expenditure submitted by the assessee in respect of eligible and non-eligible units are as under :

Name of the head	80IC Unit	Other Units	Total
<b>Income</b>			
Sales & other income	37,44,46,850/-	63,61,34,335/-	101,05,81,185/-
<b>Expenditure</b>			
Personnel Expenses	20,95,51,61-	53,34,544/-	74,30,060/-
Administrative & Selling Expenses	1,81,76,776/-	4,50,25,868/-	6,32,02,644/-
Directors Remuneration	3,10,650/-	5,29,350/-	8,40,000/-
Financial Charges	65,51,195/-	33,53,047/-	99,04,242/-
Depreciation (as per I.T. Rule)	5,80,912/-	54,19,581/-	60,00,493/-

8. The Assessing Officer observed from the above chart that the assessee has charged disproportionate expenditure. Therefore, after giving reasons, he distributed the expenditure between the eligible units and non-eligible units on the basis of turnovers and computed the deduction u/s. 80IC to the extent of Rs.1,09,47,163/- against the claim of assessee of Rs.2,65,43,978/-. Accordingly, he added the difference amount of Rs.1,55,96,815/- to the income of the assessee.

9. Aggrieved from the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A). The assessee also took additional ground before the Id. CIT(A) regarding the additional income declared by the assessee by way of revised chart and claimed deduction u/s. 80IC on the

additional income. The ld. CIT(A) after considering the submissions of the assessee partly allowed the appeal of the assessee. Aggrieved, the Revenue is in appeal before the Tribunal.

10. The ld. DR relied on the order of the Assessing Officer and submitted that the ld. CIT(A) has accepted the appeal of the assessee only on the basis of submissions of assessee. The assessee was asked to produce books of account, bills and vouchers time and again , but he did not produce the same. The speed money/bribe paid by the assessee out of sale of scrap and from bogus purchase is not allowable as per section 37(1) of the IT Act. The ld. CIT(A) has allowed the deduction u/s. 80IC on the scrap sales of Rs.87,270/- and bogus purchase of Rs.4,86,408/- not eligible for deduction u/s. 80IC because it was not recorded in the books of account. The ld. CIT(A) has also committed a mistake while allowing deduction u/s. 80IC of Dehradun Unit and Haridwar Unit because the assessee had produced only the comparative statement and charged disproportionate expenses to the eligible and non-eligible units. He has accepted the submissions of the assessee only analyzing the data produced by the assessee without verifying the same from the books of account and supporting evidence. Unvouched expenses of Rs.6 lacs have been allowed without verifying the same. Reliance placed on the judgment in Dhakeshwari Cotton Mills, 26 ITR 775 is misconceived. Accordingly, the ld. DR prayed to restore the order of the Assessing Officer.

11. None is present on behalf of the assessee.

12. After hearing both the sides and perusing the entire materials available on record, we observe in respect of issue No. 1 that the similar issue was involved in ITA No. 1929 & 1930/Del/2012 for the assessment years 2003-04 and 2004-05 respectively in the cases of assessee itself, which has been decided by the Tribunal in favour of the assessee observing as under :

*14. When it is not in dispute that the assessee has been making payment on account of speed money varying from 0.8% to 2.58% of the project value/contract value, the AO has rightly assessed the amount of Rs.30,85,500/- @ 0.75% of Rs.41.14 crores for AY 2003-04 and Rs.43,37,000/- @ 0.75% of Rs.61.83 crores for AY 2004-05 by treating the same to have been paid out of unaccounted income generated from scrap of sale. Since the assessee has failed to explain the availability of funds with him to explain the entries made in the seized material pertaining to the speed money so as to work out as to which of the amount pertains to a particular assessee in group cases on account of speed money, the benefit of telescoping cannot be given to it. So, in these circumstances, Id. CIT (A) has erred in reversing the order of the AO in assessing the speed money at Rs.30,85,500/- & Rs.43,37,000/- for AYs 2003-04 & 2004-05 respectively. So, the findings returned by the Id. CIT (A) on this ground are hereby reversed and findings of AO are restored. Consequently, ground no.2 for AYs 2003-04 & 2004-05 is determined in favour of the Revenue.*

13. Respectfully following the above decision of co-ordinate Bench in the identical facts and circumstances, we allow this issue in favour of the Revenue. Therefore, the relevant ground No. 1 in assessment year 2005-06 and 2006-07 and ground No. 2 in assessment year 2007-08 raised by the Revenue are allowed.

14. As far as the issue relating to unvouched expenses is concerned, this issue is also covered by the aforesaid decision of Tribunal , wherein the Tribunal has decided the issue as under :

*19. The deletion of Rs.3,00,000/- for AY 2004-05 as against the addition of Rs.4,00,000/- disallowed by the AO claimed by the assessee on account of business expenses, was made by the AO again for non-furnishing the complete details like books of accounts, bills and vouchers, so as to verify the genuineness of the expenses. However, the ld. CIT (A) has restricted the addition to Rs.1,00,000/- by taking into account the facts highlighted by AO 14 ITA Nos.1929 & 1930/Del./2012 during framing of assessment of the assessee u/s 143 (3) on 29.12.2006, the addition of Rs.3,00,000/- was made on the admission of the assessee, and confirmed the remaining addition of Rs.1,00,000/-. Keeping in view the fact that when, as per findings returned by the AO, addition of Rs.3,00,000/- made in the assessment u/s 143 (3) was confirmed vide impugned order only remaining addition of Rs.1,00,000/- was to be explained by the assessee who has not preferred to produce the account books supported with bills and vouchers to explain the genuineness of the expenses. So, we are of the considered view that this issue also requires to be sent back to the AO to decide afresh after providing an opportunity of being heard to the assessee. So, ground no.4 in AYs 2003-04 & 2004-05 is determined in favour of the Revenue for statistical purposes.*

15. In view of aforesaid decision in the case of the assessee itself, ground No. 2 for assessment year 2005-06 and grounds Nos. 3 in assessment year 2006-07 and 2007-08 are allowed for statistical purposes and the matter is sent back to the file of Assessing Officer to decide it afresh in view of the directions given by the Tribunal in the case of assessee for A.Yrs. 2003-04 and 2004-05. The assessee shall be given reasonable opportunity of being heard.

16. As regards the issue relating to disallowance of deduction u/s. 80IC of Rs.1,55,96,115/- made by the Assessing Officer, we observe from the records that the Assessing Officer while calculating the disallowable profit of eligible units, has computed the claim u/s. 80IC on the basis of turnover of eligible units and non-eligible units. The Assessing Officer, however, has not made any examination in depth as to the veracity of expenditure declared by the assessee to have been incurred on eligible and non-eligible units, particularly when the assessee could not be able to produce the books of accounts as well as bills and vouchers before the Assessing Officer so as to deduce correct profits eligible for deduction u/s. 80IC. We observe that for want of supporting documentary evidence or books of account, the doubt of the AO that the profit of non-eligible units was diverted to the eligible units with objective to claim deduction u/s. 80IC, cannot be said to be completely wrong. The Id. CIT(A) has only analysed the details furnished by the assessee and did not make any verification or examination thereof on the anvil of basic accounts or bills or vouchers so as to belie the contention of the Assessing Officer regarding diversion of profit of non-eligible units to the eligible units. The Id. CIT(A) has thus wrongly allowed the claim of assessee only on the basis of submissions made by it and the financial documents furnished by it without verifying the expenditure etc. from the books of account. In presence of all these facts, we deem it expedient in the interest of justice to remit the matter back to the file of Assessing Officer for deciding the issue afresh after examining the expenses made on eligible and non-eligible units with reference to the basic features /records such as consumption of fuel and manpower with reference to production, indirect expenses, books of account and

vouchers to be submitted by the assessee, interest bearing funds employed in eligible units, investigation of discounts given in eligible and non-eligible units and all other relevant factors to deduce correct profit eligible for deduction u/s. 80IC. The assessee is directed to produce the books of account and supporting documents in respect to eligible and non-eligible units before the Assessing Officer so as to examine the claim u/s. 80IC of the Act. Needless to say, the assessee shall be given reasonable opportunity of being heard. Accordingly, ground No. 3 for the assessment year 2005-06 and ground No. 4 for A.Yrs. 2006-07 and 2007-08 are allowed for statistical purposes.

17. The next issue involved in this appeal for A.Y. 2005-06 pertains to allowing additional deduction of Rs.87,270/- for bogus sales of scrap and Rs. 4,86,408/- in respect of bogus purchases admitted by the assessee itself. It is an admitted fact that the aforesaid amounts relate to bogus purchases and bogus sales, meaning thereby no actual purchase or sale took place or the assessee had no evidence to support these sales and purchases. However, the amounts relating to these bogus purchase and sales were stated to have been spent on bribery/speed money given to various persons, which is not allowable under the IT Act. These amounts of bogus purchases and bogus sales were admittedly not shown by the assessee in its profit and loss accounts or in any of its books nor did he claim any deduction on such bogus purchases and sales u/s. 80IC in original return. These two amounts of bogus purchases and sales also do not find place in Form No. 10CCB which was issued by an Accountant. Therefore, in our considered opinion, the assessee would not be entitled to the deduction u/s 80IC of the Act on the aforesaid additions made on account bogus purchases and bogus sales. The assessee is

maintaining both eligible and non-eligible units. Had the above said purchases and sales been proved to be made for his eligible units and accounted for in its profit and loss account, then the above said disallowance would have been eligible for deduction u/s. 80IC of the Act as it would have increased the eligible profit. But no such situation is existing in the instant case. The assessee has neither recorded the amounts of bogus purchases and bogus sales into its books of account, and it was only when the search took place, the assessee admitted them to be bogus. Thus, their disallowance cannot be used to increase such profit which is eligible for deduction u/s. 80IC of the Act. In view of this, the conclusion reached by the Id. CIT(A) while considering the above disallowances for the purpose of deduction u/s. 80IC cannot be supported. Accordingly, ground No. 4 of Revenue's appeal for A.Y. 2005-06, ground No. 5 for A.Y. 2006-07 and ground No. 6 for A.Y. 2007-08 deserve to be allowed.

18. In appeal for A.Y. 2006-07, the Revenue has also challenged the action of the Id. CIT(A) for restricting the addition from Rs.1,23,49,264/- to Rs.1,01,71,831/- on account of bogus purchase. The brief facts are that the Assessing Officer made disallowance of Rs. 1,56,50,479/- on account of bogus purchases, rectified u/s. 154 to Rs.1,23,49,264/-. The assessee declared a sum of Rs.52,43,035/- on account of bogus purchases. However, the assessing officer held that as per the ledger account of bogus purchase parties the total bogus purchases during the F.Y. 2005-06 were Rs.2,08,93,524/-, the details of which are given in the assessment order. The Assessing Officer accordingly, made addition of Rs.1,56,50,479/- which was reduced to Rs.1,23,49,264/- vide order u/s. 154 of the Act.

19. Before the Id. CIT(A), the assessee submitted that in the return of income filed in response to notice u/s 153A the assessee company has declared income of Rs.52,43,035/- on account of excess purchases from certain parties. During the course of assessment proceedings, it was discovered that the year wise surrender made by the appellant on account of excess purchases was not correct. The figures of such excess purchases were not computed correctly. Owing to this omission, income was less declared in some of the years and at the same time excess income was declared in other year. The income was less declared in A.Y.2004-05, A.Y.2005-06 and A.Y. 2006-07 whereas it was excess declared in A.Y. 2007-08. This factual position was explained to the A.O. and it was stated that disallowance should be made on the basis of such actual and correct position. For the year under consideration the assessing officer computed the total excess purchases at Rs.2,08,93,524/- and after reducing already declared income of Rs.52,43,035/-, he added the balance amount of Rs. 1,56,50,479/-. In the figure of Rs.2,08,93,524/- the A.O. committed mistake in relation to two parties namely Mohit Industries and G.R. Gupta & Bros. In respect of these two parties the A.O. took the purchases figure at Rs.20,60,550/- and Rs. 12,40,465/- respectively, (totaling to Rs.33,01,015/-). However, the fact of the matter was that the assessee did not make any purchases from the foresaid two parties during the year and further that the figure of Rs.20,60,550/- in relation to Mohit Industries was actually figure of sales to them and not purchases from them. After considering the submissions of the assessee, the Id. CIT(A) has decided the issue as under :

*“It is noted from the assessment order that the assessing officer made addition of Rs.1,56,50,479/- on account of bogus purchases. Out of this addition of Rs.1,56,50,479/-, addition to the extent of Rs.33,01,015/- was rectified by him in his order dated 10.02.2009 u/s 154 of Income Tax Act, 1961. After the rectification the addition on account of bogus purchases remains at Rs.1,23,49,264/-. This addition is based upon the appellant’s own admission during the course of assessment proceedings. This factual position is admitted by the appellant in its present submission before me. Therefore, the appellant cannot principally have any grievance on the nature of addition to income made by the Assessing Officer by making disallowance on account of bogus purchases.*

*The appellant has however contended that the disallowance made should be restricted to Rs. 1,01,71,831/- by giving credit of Rs.21,77,433/- being the amount of additional income already declared by the appellant under the head “Others”. It is seen from para 2 of the assessment order that for the year under consideration, the appellant has declared additional income of Rs.2,74,00,000/- in the return of income filed in response to notice u/s 153A. This amount declared was bifurcated as Rs. 1,99,79,532/- on account of Scrap Sales, Rs.52,43,035/- on account of Excess Purchase and Balance Rs.21,77,433/- as “Others”. The appellant has submitted that the amount of Rs.21,77,433/- under the head “Others” was declared by it to fulfill its commitment of declaring Rs.2,74,00,000/- as additional income for the year, although no such “other income” was found as per the seized material. The assessing officer has also not disputed the fact that there was actually no such income of Rs.21,77,433/- as per the seized material. Once the assessing officer is making separate addition of Rs. 1,23,49,264/- on account of bogus purchases, the appellant should reasonably and in equity be entitled also to get credit of the already declared income for Rs.21,77,433/-, which apparently is not linked with any specific document seized during the search. In view of these facts, the addition of Rs. 1,23,49,264/- made by the assessing officer (after the rectification effect) is restricted to Rs. 1,01,71,831/-. Thus the addition to the extent of Rs.1,01,71,831/- is confirmed and the appellant gets relief of Rs.21,77,433/-. These grounds of appeal are accordingly partly allowed.”*

20. Having gone through the aforesaid findings of the Id. CIT(A), we find that the conclusions reached by the Id. CIT(A) are based on factual position available on record and has reduced the amount of Rs.1,23,49,264/- declared by the assessee as income under the head "others". There being no contrary material on record to discard the above conclusion reached by the Id. CIT(A), we find no substance in ground No. 2 raised by the Revenue in appeal for the assessment year 2006-07. Accordingly, this ground of appeal deserves to be dismissed.

21. The additional issued by the Revenue in ground No. 1 for the assessment year 2007-08 is with respect to deletion of addition of Rs.1,05,51,660/- made by the Assessing Officer on account of sale of scrap. On the basis of seized material, the assessee declared total sale of scrap at Rs.29,36,340/- against total consumption of raw materials worth Rs.134.98 crores. The Assessing Officer noticed that in earlier years, the scrap declared by the assessee ranges from 12.21% to 17.93% of the manufacturing of transformers. On this analogy, the Assessing Officer estimated the sales of scrap at Rs.1,34,98,000/- representing to 1% of the raw material consumed. He accordingly added the difference amount of Rs.1,05,61,660/-. In appeal, the Id. CIT(A) deleted the said addition on the premise that in the search matters, the estimation of any sale cannot be made on the basis of assumption, but on the basis of incriminating material found in the search and that such an estimation resulting into increment in business income, would amount to undue benefit to the assessee being an eligible unit for deduction u/s. 80IC. For this, the Id. CIT(A) has relied on various case laws.

22. Having gone through the record and considering the submissions of the ld. DR, we find that this issue is covered by the decision of co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2003-04 (ITA No. 1929/Del/2012), wherein the Tribunal has decided this issue against the Revenue and in favour of the assessee as under :

*8. In AY 2003-04, ld. CIT (A) has deleted the addition of Rs.17,12,565/- out of total addition of Rs.32,71,000/- made by the AO on account of unaccounted income from scrap sale. When we examine document A-2/B-3 scrap sale pertaining to AY 2003-04 is of Rs.15,58,435/-. When it is not in dispute that incriminating material A-2/B-3 containing detail of scrap sale was seized during search and seizure operation, the AO was not permitted to resort to estimating to make addition on account of sale of scrap @ 1% of the total raw material consumed, particularly when the assessment is being made u/s 153A of the Act. So, we are of the considered view that in AY 2003-04, ld. CIT (A) has rightly deleted the addition of Rs.17,12,565/- by confirming the remaining addition of Rs.15,58,435/-. So, ground no.1 in AY 2003-04 is determined against the Revenue.*

Respectfully following the above decision of co-ordinate Bench and for want of any contrary material on record, ground No. 1 for assessment year 2007-08 deserves to be dismissed.

23. The next additional issue involved in ground No. 5 of appeal for A.Y. 2007-08 relates to deletion of addition of Rs.1.75 crores by holding that the same was included twice for the purpose of computing the total income. The ld. CIT(A) has decided this issue in para 8.1 of the impugned order as under :

**finding on Ground of Appeal No. 9:-** I have considered the submissions of the appellant. The rectification application filed by the appellant and the order passed u/s 154 by the assessing officer in this regard has also been gone through. It is seen that original return of Income was filed by the appellant on 13.09.2007 declaring income of Rs. 1,96,92,770/- calculated as under :-

Net Profit as per P & L A/c	7,34,82,430
Add: Depreciation as per book	70,49,721
Less: Depreciation as per Income Tax Act	57,31,679
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Gross Total Income	7,48,00,472
Less: Deduction u/s 80IC	5,51,07,706
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Total Income	1,96,92,770
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Thereafter, revised return was filed on 01.09.2008 declaring income of Rs.3,71,92,770/- detailed as under :

Net Profit as per P & L A/c	7,34,82,430
Add: Depreciation as per book	70,49,721
Less: Depreciation as per Income Tax Act	57,31,679
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Gross Total Income as per Original return	7,48,00,472
<b>Add - Income surrendered during search</b>	<b>1,75,00,000/</b>
Less - Deduction u/s. 80IC	5,51,07,706
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The difference between original return and revised return is for amount of Rs. 1,75,00,000/- surrendered during search. However the claim of the appellant is that this amount was already included in the original return filed and due to mistake, the amount was again included in the revised return resulting into double inclusion and double taxation of same amount. In the original return, **the net profit as per P & L A/c was taken at Rs.7,34,82,430/-**. This profit of Rs.7,34,82,430/- was arrived at after considering the aforesaid amount of Rs. 1,75,00,000/-. In schedule 10 of P & L A/c, under the head "Other Income" a sum of Rs.2,16,77,825/- has been shown which includes the following :-

Interest on FDR	40,49,936
Miscellaneous Income	1,76,27,889
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	2,16,77,825
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The figure of Rs. 1,76,27,889/- includes Rs. 1,75,00,000/- surrendered during search which is evident from Note No. (viii) of schedule 16 of Balance Sheet. In this note it has been disclosed that :-

"Miscellaneous income includes Rs.175 Lacs an additional income offered during the course of search proceedings carried out by the income tax department under section 132 of Income Tax Act."

Further, the auditors of the company in para 5.2 of their Audit Report has also confirmed this fact by stating as under :-

"During the search proceedings, the company has offered Rs.175 lacs as additional income and the same has been taken into consideration in F. Y. 2006-07 financial Statements by the company under the head other income and corresponding amount has been shown as other assets."

From the aforesaid factual position, it is apparent that due to bona fide mistake in understanding of I.T. provisions the same amount of Rs. 1,75,00,000/- has been included twice in the income of the assessee. The appellant is therefore legally and under equity entitled for exclusion of amount of Rs. 1,75,00,000/- from its income. It is not legally justified on part of revenue to take advantage of the ignorance of the assessee's understanding of legal provisions. The assessing officer is accordingly directed to exclude the amount of Rs. 1,75,00,000/- from the income of the appellant which has been included twice in the income of the appellant. This ground of appeal is allowed."

24. For want of any contrary material from the side of Revenue, we do not find any justification to interfere with these findings of the Id. ACIT(A) as no litigant can be taxed twice on the same amount. On perusal of the financial statements and notes on accounts, we find that the amount of Rs.1.75 crores had already been considered as income in the original return of income. However, the said amount was again included in the revised computation given during the assessment proceedings by mistake. We, therefore, do not find any mistake in the conclusions reached by the Id. CIT(A) as above. Accordingly, ground No. 5 deserves to be dismissed.

25. The further additional issue raised by Revenue in ground No. 7 of appeal for A.Y. 2007-08 relates to deletion of addition of Rs.65,83,385/- out of addition of Rs.1,44,66,000/- made by the Assessing Officer on account of bogus purchases. The ld. CIT(A) has decided this issue as under :

***“Finding on Ground of Appeal No. 10 : I have gone through the remarks of the assessing officer in the assessment order and also the submission of the appellant. The rectification application filed by the appellant and the order u/s 154 passed by the assessing officer have also been gone through. From the rectification order of the A.O. dated 11.02.2009 it transpires that the A.O. has not disputed that the amount of bogus purchases during the year is Rs.78,82,615/- only instead of Rs. 83,42,433 as recorded in the assessment order. The only reason because of which the assessing officer has not allowed the relief of Rs.65,83,385/- to the appellant is that the appellant himself has declared the income of Rs. 1.44,66,000/- on account of bogus purchases during the year . In my considered opinion, merely because there was as mistake in the initial disclosure by the appellant in the return of income , the assessing officer was not justified in not revising/revisiting the correct figures of bogus purchases, once pointed out by the assessee. The mistake by the appellant in the disclosure has already resulted into additional disallowance of Rs. 1,46,02,417/- in the earlier years which have been accepted by the appellant. Therefore it cannot be justified that the figures of the appellant which are resulting into further disallowance in earlier years are accepted by the revenue while the figures which result into lower disallowance by way of correction are disregarded. Since the deduction claimed in respect of purchases from parties, which have been found to be bogus is only Rs.78,82,615/- during the year, there can be no basis for making further disallowance or addition under this head which more than this amount. The assessing officer is therefore directed to allow a relief of Rs.65,83,385/- to the appellant by restricting the addition on account of bogus purchases to Rs.78,82,615/- only instead of Rs. 1,44,66,000/- as adopted in the assessment order. This ground of appeal is allowed.”***

26. On perusal of the above findings of the ld. CIT(A), we do not find any infirmity therein. No contrary material is placed on behalf of the Revenue to

discard the findings reached by the first appellate authority. The Id. CIT(A) while deleting the addition has considered the rectification order u/s. 154 made by the Assessing Officer and the details of total purchases made by assessee and has rightly considered the actual bogus purchases at Rs.78,82,615/- during the year. He, therefore, rightly directed the Assessing Officer to allow relief of remaining amount of Rs.65,83,385/- by restricting the addition on account of bogus purchase of Rs.78,82,615/- instead of Rs.1,44,66,000/- considered by the Assessing Officer. Finding no infirmity in the impugned order, we uphold the same. Accordingly, ground No. 5 for the assessment year 2007-08 deserves to be dismissed. However, it is made clear that the effect of this decision shall be considered for the purpose of deduction u/s. 80IC as per our decision on ground No. 6 of this appeal.

27. In the result, the appeals of the Revenue are partly allowed.

Order pronounced in the open court on 08.01.2019.

Sd/-

**(H.S. Sidhu)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 08.01.2019

*\*aks\**