

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**ITA No.3978/Del/2014
Assessment Year: 2010-11**

DCIT, Central Circle -4(1),
New Delhi.

vs

M/s Lion Holdings P. Ltd.
F-2, Kailash Plaza,
H-252, Sant Nagar, East of Kailash
New Delhi.
PAN: AAACL5500D

**Assessee by
Revenue by**

**Shri Pratap Gupta, CA
Smt. Naina Soin Kapil, Sr. DR**

**Date of Hearing 04.02.2019
Date of Pronouncement 05.02.2019**

ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the order dated 15/4/2014 in appeal No. 149/2012-13 on the file of the learned Commissioner of Income Tax (Appeals)-VIII, New Delhi ("Ld.CIT(A)"), Revenue preferred this appeal challenging the restriction of the disallowance under section 14A of the income tax Act, 1961 ("the Act") read with Rule 8D of the income tax Rules, 1962 ("the Rules") from Rs.16,63,840/-

to Rs.1,37,250/-and also restricting the disallowance made by the learned assessing officer on account of bifurcation of expenses of the units of the assessee from Rs. 80,77,398/-to Rs. 3,27,702/-.

2. Brief facts of the case are that the assessee is a closely held company and is engaged in the business of manufacturing of Aerosol Volves and Spray Pumps and Dispensers, Dies and Moulds, Moulds of plastics etc and has two units of manufacturing at Greater Noida and the other at Buddi of Himachal Pradesh. Unit in Greater Noida is not eligible for deduction under section 80 IC whereas the unit at the Buddi (Himachal Pradesh) is eligible for a deduction under section 80 IC. For the assessment year 2010-11 assessee filed the return of income on 5/10/2010 declaring an income of Rs. 74,58,825/-. Learned assessing officer completed the assessment under section 143(3) of the Act by order dated 18/1/2013 by making two additions. The first one is to the tune of Rs. 16, 63, 840/-by making disallowance under section 14 A of the Act and Rule 8D of the Rules and the 2nd one is to the tune of Rs. 80, 77, 398/-on account of realization of the expenses between these two units.

3. In appeal preferred by the assessee, Ld. CIT(A) restricted the additions to the extents as stated above. Hence the Revenue is in this appeal.

4. It is the submission of the Ld. DR that the assessee failed to differentiate before the Ld. AO that the investments so made are not from the common pool of funds and, therefore, the learned assessing officer is justified in making the addition. Per contra, it is the submission of the Ld. AR that all the material was available before the learned assessing officer but the learned assessing officer failed to appreciate the same and resorted to the addition without affording an opportunity to the assessee.

5. We have gone through the material available on record in the light of the submissions made before us. It could be seen from the record that in the year under consideration, the assessee made investments of Rs. 5 crores and Rs. 17,88,077/-in the hundred percent subsidiaries. Learned assessing officer applied the formula under Rule 8D of the Rules and estimated the disallowance at Rs. 16,63,840/-. The expenses were admittedly nil. Insofar as the disallowance under Rule 8D (2) (ii) and 8-D(2)(iii) of the Rules is concerned, learned Assessing Officer calculated it at Rs. 16, 63, 840/-.

6. Ld. CIT(A), on a perusal of the source of investment, found that the assessee company made such investment out of non-interest-bearing loan and/or non-interest-bearing funds as is evident from the Ledger account of investment. Ld. CIT(A) held that the interest-bearing funds were used by the assessee and in view of the settled position of law, no addition under Rule 8-D(2)(ii) of the Rules could be made and on such remise Ld. CIT(A) deleted the addition of Rs. 15,17,650/-.

7. Insofar as the calculation of the administrative expenses, while following the formula given under Rule 8-D of the Rules, Ld. CIT(A) calculating the same at Rs. 1,37,250/-and confirmed the same. We do not find anything illegality or irregularity in these findings reached by the Ld. CIT(A). Since no direct expenses were incurred by the assessee for making the investment or maintaining the same, no addition under Rule 8-D(2)(i) of the Rules could be made. So also, since non-interest-bearing funds were used for investment, no addition under Rule 8-D(2)(ii) of the Rules is attracted. Ld. CIT(A), therefore, rightly deleted the additions made under Rule 8-D(2)(ii) of the Rules and rightly confirmed the addition as per the calculation under Rule 8D(2)(iii) of the Rules. We, therefore, do not find any reason to interfere with

the findings of the Ld. CIT(A) on this aspect and ground No. 1 of the appeal is dismissed.

8. Insofar as the disallowance on account of the allocation of expenses between the unit eligible for deduction under section 80 IC and the unit not eligible for deduction under section 80 IC is concerned it could be seen from the record that the learned assessing officer allocated the expenses on the basis of turnover of both the units; whereas Ld. CIT(A) considered the contention of the assessee that for a variety of reasons there could be higher turnover ratio in comparison to assets employed as quite convincing for the reason that the factory building at Baddi is not owned by the assessee company and reputable local sale at Baddi unit lower working capital is required in comparison to Greater Noida unit where export sales is made. Ld. CIT(A) further held that if interest is paid and/or received on day-to-day balance of inter-unit transaction, interest has to be paid by the Greater Noida unit to the Baddi unit meaning thereby that no borrowed funds from bank are used by the Baddi unit.

9. So also, in respect of royalty charges, Ld. CIT(A) held that the learned assessing officer had not brought on record anything to prove that royalties paid to the principal, namely on the turnover of the Baddi unit, and the royalties paid by the Greater Noida unit on the production of convenience dispensing product in Greater Noida unit in accordance with the agreement signed between the principal and the assessee company in the year 2003; and that since royalties paid on the basis of production and not on the basis of turnover, learned assessing officer is not justified in allocating the royalty expenses on the basis of sales.

10. In respect of travelling expenses also, Ld. CIT(A) took the view that since no important export is made from Baddi unit, expenses on foreign

travelling is solely attributable to the Greater Noida unit only and the same cannot be allocated to both the units on the basis of turnover.

11. On the aspect of general expenses Ld. CIT(A) recorded that the learned assessing officer had allocated the expenditure in total without examining each head and nature of expenses and, therefore, Ld. CIT(A) reappraised the actual expenses head wise with reference to the nature of expenditure and held that the learned assessing officer is not justified in allocating the interest written off since the same was accrued in the books of Greater Noida unit and the assessee had rightly written off the same in Greater Noida unit. So also, in respect of the duty drawback received, since it was receivable on export business only and admittedly there was no export sale in but the unit the same cannot be attributable to Baddi unit and, therefore, the learned assessing officer is not justified in allocating the same to the Baddi unit.

12. Similarly, in respect of the Sundry balance written off, Ld. CIT(A) found that out of balance outstanding, certain amounts pertain to period prior to establishment of Baddi unit and, therefore, such amount cannot be allocated to Baddi unit and it pertains only to the Greater Noida unit. Ld. CIT(A), therefore, held that these amounts pertain specifically to the units by whom sales to the parties were made and, therefore, the same cannot be allocated to both the units on turnover basis. Ld. CIT(A), accordingly, granted relief to the assessee to the tune of Rs. 8, 49, 704/-under the head of miscellaneous balance written off.

13. In respect of foreign exchange fluctuation, Ld. CIT(A) found that since no export and import is made by Baddi unit, no allocation could be made in respect of this foreign exchange fluctuation to the Baddi unit and under that head granted relief to the assessee to the extent of Rs. 26,603/-.

14. On account of Testing charges, the total Testing charges paid by the assessee was Rs. 6,20,904/-, out of which a sum of Rs. 6,16,749/-was incurred by Greater Noida unit and Rs. 4,155/-was incurred by Baddi unit; that at Greater Noida unit expenses were paid to M/s Sriram lab situated at Delhi for radiation charges of the product-polio dropper which is supplied to M/s Panacea Biotech at Delhi; that a perusal of the same shows that the testing charges were paid by the assessee company for the specific product manufactured by a particular unit and the same was not manufactured in another unit; and that, therefore, the same cannot be allocated in both the units on the basis of turnover. On this score assessee got a relief to the tune of Rs. 2, 61, 177/-.

15. Under the head Rates and Charges, on a perusal of the record, Ld. CIT(A) found that the rates and taxes were paid on the transaction on purchase or sale like VAT/anti-tax, plastic goods to tax etc and the same cannot be taken as common expenditure requiring any allocation, but on the other hand, they exclusively related to a particular unit for which the purchase etc was made and accordingly the same is accounted for that particular unit. In all in the case of rates and taxes, assessee company debited a sum of Rs. 1,35,141/-in Greater Noida unit and Rs. 1,72,955/-in Baddi unit whereas the learned assessing officer allocated the same in the ratio of Rs. 1,76,437/-and Rs. 1,31,659/-between Greater Noida and Baddi units, which patently does not seem to be correct. Ld. CIT(A), therefore, increased the profit of Greater Noida unit by Rs. 41,296/-on this score.

16. On the aspect of EPF and EDLIS and administration charges account, on a perusal of the details of the account, Ld. CIT(A) found that this amount pertains to employer contribution towards EPF directed on wages and salary and since the learned assessing officer had accepted unit wise wages and

salary paid, there is no justification to treat the same as common expenditure and to resort to the allocation on the basis of turnover. Ld. CIT(A), therefore, granted relief of Rs. 47, 696/-under this head.

17. In respect of membership fee, Ld. CIT(A) allocated the expenditure in the ratio of 70% and 30% between the Greater Noida unit and Baddi unit respectively. The membership fee was paid to various organisations like CII and export promotion Council, institution which is mostly related to product development and export business. Assessee company had not made any important export in Baddi unit, expenses were debited by the assessee in Greater Noida unit . Ld. CIT(A) held that the benefit of membership fee cannot be denied to Baddi unit and keeping in view the nature of business and export and import business in Greater Noida, obedience of Justice, an estimate of 70% is attributed to the Greater Noida unit, thereby granting relief to the tune of Rs. 26,787/-.

18. On the aspect of business promotion expenses on a reappraisal of the details furnished, Ld. CIT(A) found that most of the expenses were paid through business card for promotion of business and since no specific detail for the purpose of expenditure for unit wise was furnished and kept in view of area of business in India and overseas and increase in turnover of Greater Noida unit and more particularly export turnover, to obedience of Justice, an estimated 70% was attributed to the Greater Noida unit while allocating the remaining 30% to the Baddi unit and thereby the relief to the tune of Rs. 1,21,818/-was granted.

19. In relation to the donations and subscriptions, Ld. CIT(A) found that the donations of Rs. 25,000/-was paid by Greater Noida unit to National Association of blind and Rs. 3000/-by the Baddi unit to Sarbajaneen Durga Pooja Samiti. Ld. CIT(A) found that the donation is not eligible for deduction

under section 80 G and has been added by the assessee company to its gross total income and, therefore, if the same is to be allocated on the basis of turnover, even then there will be no difference in the quantum of amount of deduction under section 80 IC as the same shall be added back in the computation. He further held that the donations have been paid by the assessee company to local areas and, therefore, the assessee company had rightly debited the amount so paid in the respective unit. Ld. CIT(A), therefore, granted relief to the tune of Rs. 8, 965/-to the assessee under this head.

20. Likewise, in respect of the expense of Rs. 4, 215/-incurred by the Greater Noida unit and Rs. 2,350/-incurred by the Baddi unit on the books and periodicals, Ld. CIT(A) found that the payment was made towards purchase of local newspapers/magazines and cannot be allocated on turnover basis.

21. On the aspect of recruitment charges Ld. CIT(A) found that the assessee had paid recruitment charges of Rs. 7,000/- for the recruitment of staff at Greater Noida unit and, therefore, the same cannot be allocated to the Baddi unit. In relation to the receipt of sales-tax/VAT refund of Rs. 25,483/- from Greater Noida sales-tax authority, there is no justification for allocating the same on the turnover basis amongst both the units thereby increasing the profit of Baddi unit resulting in higher amount of deduction under section 80 IC. Ld. CIT(A) corrected the same by adding back Rs. 10,890/-to the Greater Noida unit.

22. Auditory and out of pocket expenses were to the tune of Rs. 64,800/- paid by both the units and the Ld. CIT(A) held that the expenses were incurred by the units in equal proportion, as such he reduced the further disallowance of Rs. 4,709/-.

23. Brokerage of Rs. 75,000/-for hiring the rent-free accommodation provided to the employee director of the company at Greater Noida and director accommodation paid and debited in Greater Noida unit and was accepted by the learned assessing officer. In such an event, Ld. CIT(A) held that the learned assessing officer is not justified in allocating the same to both the units on the basis of turnover and granted relief to the tune of Rs. 32,050/-by deleting the same.

24. Similarly, Ld. CIT(A) considered the nature and extent of the expenses relating to the uniform, software and sample expenses and granted relief to the assessee to the tune of Rs. 19,210/-, Rs. 351/-and Rs. 12,784/- respectively.

25. It is, therefore, clear that Ld. assessing officer did not consider the nature of expenses before the allocation of the same on the basis of turnover. Ld. CIT(A), having gone through the details of expenditure and considering the fact that separate books of accounts are maintained by the assessee company for both the units and the same were subjected to audit, considered in detail the nature of each expenditure and the desirability of the allocation of the same between the two units. Ld. CIT(A) on a per usual of the evidence and the details available on record found that the bills for assets were supported by proper transport receipts wherever required and the bills contain the name and proper address of particular units, location of delivery of assets, existence of stamp of VAT Department of respective area of unit at entry point and also the fact that the units of the assessee company at two places are being operated on rented premises is for which it was paid and accepted by the learned assessing officer. No material is brought on record to prove anything contrary to the findings of the Ld. CIT(A). We, therefore, are of the considered opinion that there is no justification for the learned assessing

officer to allocate the expenses on turnover basis without first trying to understand the nature of expenses and its desirability for allocation between the units.

26. We do not find anything illegality or irregularity in the findings of the Ld. CIT(A) and such findings of fact which are firmly entrenched in the record do not warrant any interference by this Tribunal. We, accordingly, upholding the findings of the Ld. CIT(A) fine ground No. two of the Revenue's appeal as devoid of merits and deserves to be dismissed. Ground No. 2 also accordingly dismissed.

27. Grounds No. 3 to 4 are general in nature and do not require any adjudication.

28. In the result appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 05.02.2019.

Sd/-

(O.P. MEENA)
ACCOUNTANT MEMBER

Dated: February, 2019 /VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

sd/-

(K.NARASIMHA CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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