

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B', NEW DELHI)**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND**

SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

**ITA No:-3210, 3211 & 3212/Del/2016
(Assessment Year: 2009-10, 2010-11 & 2011-12)**

Assistant Commissioner of Income Tax, Central Circle -6, Room No.-364, ARA Centre, E-2, Jhandewalan Extn, New Delhi	Vs.	Sheela Foam Pvt. Ltd. 37/2, Site-4 Sahibabad Industrial Area, New Delhi PAN AAACS0189B
APPELLANT		RESPONDENT

Appellant by : Ms. Nidhi Srivastava, CIT DR

Respondent by : Sh. Gaurav Jain, Advocate
Ms. Manisha Sharma, Advocate

Date of Hearing : 22.05.2019

Date of Pronouncement : 23.05.2019

ORDER

PER: N. K. BILLAIYA, AM

ITA No.3210/Del/2016, 3211/Del/2016 and 3212/Del/2016 are three separate appeals by the revenue preferred against the order of the Commissioner of Income Tax [Appeals]-23, New Delhi, dated 04.03.2016 for Assessment Year 2009-10, 2010-11 and 2011-12.

2. Since common grievance are involved in all these appeals and since the CIT(A) has disposed all the appeals by a common order, therefore, these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. For the sake of convenience we are taking the grounds of ITA No.3210/Del/2016 which are as under :-

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 56,45,506/- made by AO on account of rotation of disallowance of u/s 14A read with Rule 8D.*
3. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,92,295/- made by AO on account of disallowance of EPF & ESI-contribution.*
4. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,70,632/- made by AO on account of disallowance of u/s TO A of the Income Tax Act, 1961.*
5. *On the facts & circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 4,71,385/- made by AO on account of disallowance of u/s 80IB of the Income Tax Act, 1961.*
6. *The appellant craves leave to add, amend any/all grounds of appeal before or during the course of hearing of the appeal.*

4. At the very outset, the counsel for the assessee stated that all the issues raised by the revenue have been decided by the Tribunal in assessee's own case in favour of the assessee and against the revenue in A. Y. 2006-07 to 2008-09.

5. The DR fairly conceded to this but pointed out that the grievance raised vide ground No.2 is now settled in favour of the revenue and against the assessee by the decision of the Hon'ble High Court of Delhi.

6. We have carefully considered the orders of the authorities below and have carefully perused the order of the Tribunal for A. Y. 2006-07 in ITA No.3832/Del/2009, 3294/Del/2010 and 950/Del/2012 dated 25.05.2018.

7. Issue raised vide ground No.1 was considered by the coordinate bench qua ground No.2 in ITA No.950/Del/2012 as under :-

"27. Ground No.2 relates to disallowance u/s. 14 A of the Act r.w.r. 8D of the Rules amounting to Rs.55,870/-.

28. We find that the assessee has not earned any exempt income during the year under consideration. Thus this grievance of the assessee has to be allowed following the judgment of the Special Bench of the Tribunal in the case of Cheminvest Ltd. Vs. CIT 121 ITD 318 which has been affirmed by the Hon'ble High Court of Delhi 378 ITR 33 [DEL]. Similar view was taken in 399 ITR 483 and by the Hon'ble Gujarat High Court in the case of Corrtch Energy Pvt. Ltd. 372 ITR 97. Respectfully following the same, we direct the Assessing Officer to delete the addition of Rs.55,870/-. Ground No. 2 is allowed."

8. As no distinguishing fact has come to our notice respectfully following the findings of the coordinate bench, the ground No.1 is dismissed.

9. Issues raised vide ground No.3 were considered by the Tribunal in ITA No.3832/Del/2009 qua ground No.3 of its appeal. Though the coordinate bench has decided this issue in favour of the assessee but now with the decision of Hon'ble High Court Delhi in the case of Bharat Hotels Limited 410 ITR 417 the same has to be decided against the assessee and in favour of the revenue since the Hon'ble High Court has held that employees contribution provident fund and ESI contribution has to be deposited within the grace period and since in the present case the deposit have been made after the grace period the same cannot be allowed. Ground No.3 is accordingly allowed.

10. Ground No. 4 and 5 is relates to the claim of deduction u/s.10 A and 80 IB of the Act. We find an identical issue was considered by the coordinate bench in ITA No.3832/Del/2009, vide ground No.2 of that appeal and the relevant findings read as under :-

"14. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below and with the assistance of the Id. Counsel for the assessee, we have considered the relevant documentary evidences brought on record in the form of paper

book in the light of Rule 18(6) of the ITAT Rules, 1962. Exhibit 36, 44,53 and 62 exhibit financial statements of four eligible units. It can be seen that in all these eligible units, the Head Office account was showing debit balance which was converted into credit balance only when profit for the year was transferred. Therefore, it cannot be said that the eligible units had borrowed funds from the Head Office.

Further, we find that the debtors of the eligible units were realized by the Head Office and accordingly, necessary entries were passed through Head Office account. Considering the factual matrix exhibited in the statement of account, it can be stated that the eligible units have not borne any financial charges and therefore, no allocation of financial charges is to be made between these eligible units. We do not find any error or infirmity in the finding of the Id. CIT(A). Ground No.2 is accordingly dismissed.

11. The DR stated that the issue may be restored to the files of the Assessing Officer for verification of the accounts.

12. We find that the CIT(A) while adjudicating this issue has considered and examined the underling facts in issue, we, therefore, do not find it necessary to remit the matter to the Assessing Officer for verification once again. The ground No. 4 and 5 are accordingly dismissed.

13. In the result, the appeals filed by the revenue are partly allowed.

Order pronounced in the open court on 23.05.2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 23.05.2019

Neha

Copy forwarded to:

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

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	22.05.2019
Date on which the typed draft is placed before the dictating Member	22.05.2019
Date on which the typed draft is placed before the Other Member	22.05.2019
Date on which the approved draft comes to the Sr. PS/PS	22.05.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	22.05.2019
Date on which the fair order comes back to the Sr. PS/PS	22.05.2019
Date on which the final order is uploaded on the website of ITAT	23.05.2019
Date on which the file goes to the Bench Clerk	23.05.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	