IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

	I.T.A. No. 1843/DEL/2016		
	A.Y. : 2011-12		
ITO, WARD 18(3), NEW DELHI		VS.	M/S NIRJA PUBLISHERS & PRINTERS PVT. LTD. 7361, RAVINDRA MANSION, RAMNAGAR, NEW DELHI – 110 055 (PAN: AAACN4282E)
(ASSESSEE)			**(RESPONDENT)**

Revenue by : Sh. S.S. Rana, CIT(DR)
Assessee by : Sh. V.K. Bindal, CA & Ms. Sweety Kothari, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 29.1.2.016 of the Ld. CIT(A)-42, Rohtak relevant to assessment year 2011-12.

2. The grounds raised in the appeal read as under:-

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in :-

1. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in deleting the addition amounting to Rs. 7,28,63,103/- made by the AO by disallowing the claim of the assessee u/s. 80IC of the Income Tax Act, 1961.

2. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in not upholding disallowance of Rs. 7,28,63,013/- u/s. 80IC of the Act by ignoring the fact that the work of printing was not carried out at the premises of the assessee in the notified area for the purpose of Section 80IC of the Act?

3. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in deleting the addition made by the AO amounting to Rs. 6,04,45,025/- for not deducting the tax at source on commission payment made to M/s S.Chand & Company Pvt. Ltd. under the guise of 'Trade Discount'.

4. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in holding that the employees' contribution to the Employees Provident Fund (EPF) which is deemed as the employees' income u/s. 2(24)(X) of the Act and which is subject to deduction u/s. 36(1)(va) of the Act is also governed by Section 43B of the Act?

5. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law?

6. That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal?

3. The brief facts of the case are that the assessee filed its e-return of income at Rs. 8,31,960/- on 27.9.2011. The Assessee has

declared book profit Rs.74,508,243/- under section 115JB of the Income Tax Act (in short "Act"). The return was processed under section 143(1) of the Act on the same income. The case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Act was issued on 26.9.2012 and the same was served. Subsequently, notice under section 142(1) of the Act was issued. In compliance to the notice, the AR of the Assessee attended from time to time and furnished various details. The assessee is engaged in the business of printing and publications of books. The assessee has claimed deduction of Rs. 78,863,013/- under section 80IC of the Income Tax Act, 1961. In support of the claim the assessee has furnished report in Form 10CCB and on perusal of the said Form, Tax Audit Report and Financial Statement, the AO made some observations and asked the assessee to explain the claim of deduction u/s. 80IC and furnished detailed note for the nature of business carried out by it by the AO and in response to the same the assessee submitted its reply and pleaded that the activities for publishing the books are in the nature of manufacturing, which were carried on by the assessee on its own and hence, it was eligible for deduction u/s. 80IC of the Act. However, the AO observed that the assessee did not carry out any printing or binding of books in the eligible undertaking at Rudrapur as, in his view, neither the paper

nor the printed material reached the eligible unit for printing, cutting and binding etc. and no manufacturing activity had actually taken place in the premises of undertaking at Rudrapur and therefore, disallowed the claim of deduction of Rs. 7,28,63,013/- and made the same to the total income of the assessee. AO with respect to the addition of Rs. 6,04,45,025/- u/s. 40(a)(ia) on account of trade discount offered by the assessee to the buyer, M/s S Chand and Company, the AO by relying upon the decision in the case of M/s Skol Breweries Ltd. (2013) 142 ITD 49 (Mum) and M/s Vodafone Essar Cellular Ltd. vs. DCIT (2011) 332 ITR 255 (Kerala), held that the said discount was in the nature of commission, on which, TDS u/s. 194H was required to be deducted, which the assessee failed to do, hence, the AO made the addition u/s. 40(a)(ia) of the Act. Further, the AO observed that the assessee had claimed expenses under the head employee's contribution of EPF, out of which certain payments aggregating to amount of Rs. 1,11,811/- were made beyond the due date as per the relevant statute. The AO did not accept the plea of the assessee that such payments were made before the due date for filing the return of income and in which regard it placed reliance on the decisions in the case of CIT vs. Vinay Cement Ltd. (2007) 213 CTR CTR (SC) 268 and CIT vs. Aimil Ltd. (321 ITR 508 Del.) and made the addition u/s. 2(24)x r.w.s.

36(1)(va) of the Act. Accordingly, the AO assessed the income of the assessee at Rs. 13,43,02,685/- by making various additions as discussed above u/s. 143(3) of the Act vide order dated 31.12.2013. Aggrieved with the assessment order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 29.1.2016 has deleted the additions by allowing the appeal of the assessee. Against the impugned order dated 29.1.2016, Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and stated that Ld. CIT(A) has wrongly deleted the addition of Rs. 7,28,63,013/- u/s. 80IC by ignoring the fact that the work of printing was not carried out at the premises of the assessee in the notified area for the purpose of section 80IC of the Act. He further submitted that since the assessee has not deducted TDS on payment made to related concern of the assessee namely M/s S. Chand & Company and hence, addition of Rs. 6,04,45,025/- u/s. 40(a)(ia) has rightly been made by the AO. He further submitted that assessee had claimed expenses under the head employee's contribution of EPF, out of which certain payments aggregating to amount of Rs. 1,11,811/- were made beyond the due date as per the relevant statue. Hence, the AO rightly did not accept the plea of the assessee that such payments were made before the due date for filing the return of

income and made the addition u/s. 2(24)x r.w.s. 36(1)(va) of the Act. In support of aforesaid contentions, he has filed the written submissions, which are read as under:-

> *"1. Principle of Res Judicata is applicable to income tax proceedings. Hence, acceptance of claim of the assessee in earlier year does not have any bearing for this year.*
>
> *The claim of the assessee u/s 80IC is not allowable in view of following facts duly recorded by the AO:*
>
> *1. The assessee in its written submission reproduced on page 5 of the assessment order has stated as follows:*
>
> > *" Para 20 - P. S. Plate, Ink & Chemicals are used for printing of books. The assessee company did not carry on any printing during the last year on its own and got the entire printing done through others and therefore no such expenses were incurred during the last year"*
> >
> > *The assessee itself has admitted that entire printing was done through others and hence deduction u/s 80IC of Rs. 7,28,63,013/- is not allowable.*
> >
> > *2. Audit report details as on point number 28(b) mentions that assessee does not have printing units of its own, but gets the books printed from outside parties on job work basis. (Page 16 of AO)*

3. Despite being given adequate opportunity, assessee failed to furnish bills of freight paid for lifting of paper from Delhi to Rudrapur as well as freight paid for lifting of printed material. (Page 15 of AO)

4. Perusal of ITR reveals that assessee claimed nil cartage expenses while in audited financial statements filed during assessment proceedings assessee has claimed freight expenses of Rs. 31.24 lakhs (Page 17 & 18 of AO)

5. In Audit report under rule 10BBB at point number 25(2)(d)(f), the article manufactured is specified as "Paper Products" while assessee has claimed to be involved in business of printing and publishing of books. The observations have been made by auditor after careful examination of various vouchers, bills and other documents. (Page 16 of AO)

6. The assessee bought some plant and machinery from M/s Rajindra Ravindra Printers Pvt Ltd, a related party.

7. There is addition to new machines which have been put to use in last month of financial year. "Ten Clamp Perfect Binding Machine" was put to use on 10.03.2011

8. Assessee has claimed expenses of Rs. 18,49,380/- for job work of book binding by Sh

Rajesh Kumar. However, notice u/s 133(6) issued to Sh Rajesh Kumar returned back unserved.

In view of above facts, deduction u/s 80IC is not allowable to assessee.

Addition of Rs. 6,04,45.025/- u/s 40(a)(ia)

The assessee has not deducted TDS on payment made to related concern of the assessee namely M/s S. Chand & Company and hence Addition of Rs. 6,04,45,025/- u/s 40(a)(ia) has rightly been made by the AO."

5. Ld. counsel for the assessee relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order which does not need any interference on our part. In support of Ld. CIT(A)'s order he has filed the Synopsis and Rejoinder to the Synopsis.

6. We have heard both the parties and perused the records especially the impugned order as well as the written submissions of both the parties. With regard to deletion of addition of Rs. 7,28,63,013/- u/s. 80IC is concerned, we find that the unit of the assessee is situated in a notified area for the purpose of allowing deduction u/s 80IC of the Act. The assessee is covered under Chapter 49 as it is producing 'printed books'. The Audit Report in the Form no. 10CCB is only one of the sources of information and cannot be conclusive evidence. The assessee sold entire printed books to M/s S Chand & Co. Pvt Ltd which is a publisher and not a trader of paper products. The assessee filed sales tax

returns showing sales of the books and was assessed as such in Rudrapur, the notified area. This establishes beyond doubt that the assessee is a publisher of the printed books. Thus, the reporting the same not so in the Form No. 10CCB is an inadvertent error and not corroborated by any other evidences. The fact that the assessee receives printed material which are trimmed and bound to give it the shape of a saleable book shows that the business operation of the assessee is in the nature of manufacturing as per Durga Products Vs ITO (2008) 12 DTR (Chd)(Trib) 297. The assessee used various machines for finishing, binding, three side cutting of books at its factory premises. Details of glue expenses and binding charges with supporting bills were also filed. The assessee carried out some of the printing on its own and filed details of expenses of ink and plates which were also sent to the AO in the remand proceedings but no adverse observation was made by the AO on the same in the remand report. Therefore, it is not necessary to have a printing unit of its own or to carry out binding on its own for holding the publication of books as a manufacturing activity in view of CIT Vs A Mukherjee & Co. (P) Ltd. (1978) 113 ITR 718 (Cal), Orient Longman Ltd. Vs CIT (1981) 130 ITR 477 (Del) and Gulab Chand Jam vs WTO (1983) 17 TTJ (Jab) 489. Thus, the activity of publishing the books carried out by the assessee was rightly held to be manufacturing activity eligible for deduction u/s 80IC of the Act. A part of the manufacturing activity of the assessee may have been outsourced or the assessee may be carrying out job work for others, does not debar the appeal and to claim deduction if it

had manufactured an entirely new product. It is noted that Mr. Rajesh Kumar was engaged as contractor to provide man power to carry out binding work at the premises of the assessee using the machines of the assessee. It is noted that notice issued u/s 133(6) of the Act to him returned unserved due to his incomplete address mentioned on the envelop and on the notice. Further, the same was not confronted to the assessee during the assessment proceedings. The assessee filed his confirmation during appellate proceedings on which no adverse comment was given by the AO in the remand report. The difference in the value of machinery in the bill and the Form 16 has no bearing on the deduction claimed u/s 80IC of the Act. The only thing required to be proved that the machinery was transported to Rudrapur and used there. The assessee produced evidences to prove this fact on which no adverse observation was given by the AO in the remand report. The assessee's explanation regarding the 'cartage' being included in the other expenses in the return of income on verification was found correct. The assessee filed various documents like purchase bills of paper, lorry receipts, bills of transporter, Form 16 issued by the VAT department for entry of any goods in Uttarakhand to show that paper was transported to Rudrapur and sent back to the printer in Delhi, then printed sheets were sent from Delhi to Rudrapur where books were manufactured which were transported to Delhi. No adverse observation in respect thereof was made by the AO in the remand report. Thus, the suspicion of the AO that no manufacturing activity took place at the eligible undertaking of the assessee is not

supported with any evidence and is just a surmise. The paper purchased from S. Chand & Co. Pvt Ltd was of an insignificant amount and is of no consequence. The gross profit ratio of the appellant company is 34% which is much lesser than the GP ratio of the other two group companies engaged in the same business. Thus, no adverse observation in terms of the provisions of the sub- sections (8) or (10) of the section 80IA of the Act can be drawn. The claim of the assessee in respect of carrying out publishing activity from the eligible undertaking was found genuine on the basis of relevant evidences placed on record and not refuted by the AO in the remand report and thus, assessee is eligible to deduction u/s 80IC of the Act. Once the deduction u/s 80IC of the Act is allowed in the 'initial assessment year' i.e. in the AY 2010-11 after due verification of the prescribed conditions and there is no change in the facts, then the deduction cannot be disallowed in subsequent years on the ground of non-fulfillment of conditions laid down in section 80-IC of the Act. This view has been fortified by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Tata Communication Internet SErvicse Ltd. (2012) 251 CTR 290 (Del.) and the decision in CIT vs. Delhi Press Patra Prakashan Ltd. (2013) 260 CTR (Del.) 253 and the decision in the case of Janak Dehydration Pvt. Ltd. vs. ACIT (2010) 134 TTJ (Ahd. (UO), which deal with this issue with regard to the claim of deduction under section 80IA and section 80IB, respectively, which are para material to the section 80IC. We further note that AO has not disallowed the deduction u/s. 80IC on the ground of violation of prescribed conditions but on the

basis of finding that the assessee did not actually carry out any operation at the premise of the eligible undertaking. AS the issue has been independently examined on merit and the assessee's claim of deduction u/s. 80IC in respect of publishing activity carried out from the premise of the eligible undertaking is found to be genuine, based on facts substantiated by relevant evidences, which have not been refuted by the AO in the remand report, hence, the assessee's claim for deduction u/s 80IC was rightly held as fully allowable and accordingly the assessee get full relief on this ground, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue. However, The judicial decisions relied upon by the Ld. CIT(DR) have been duly considered. In our considered view, we do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand.

6.1 With regard to disallowance of Trade discount of Rs. 6,04,45,025/- u/s 40(a)(ia) of the Act is concerned, we find that the assessee sold the books to M/s S. Chand & Co. (P) Ltd., its 100% holding company @ 50% of the printed price and further allowed trade discount @ 10% on the printed price of the books sold by way of credit note. The Assessing Officer held the trade discount as commission in view of the decision in the case of Skol Breweries Ltd. (2013) 142 ITD 49 (Mumbai) and in case of Vodafone Essar Cellular Ltd. Vs DCIT (2011) 332 R 255 (Kerela) (Pages

446-454 of the PB). AO has observed that since no income-tax was deducted at source thereon as per the provisions of section 194H of the Act the same was disallowed u/s 40(a)(ia) of the Act. We note that in the decision cited by the AO in his assessment order in the case of Vodafone Cellular Ltd., the distributors were middlemen who were arranging customers for the assessee and the assessee was not paying any amount to distributors besides the discount given at the time of supply of sim cards/ recharge coupons. The assessee was carrying on its business through these distributors which acted on its behalf for procuring and retaining customers and thus, discount given to them is nothing but commission. In the case of Skol Breweries (Supra), it was held that when a purchase / sales is made at discounted price, it is called discount but when an incentive is given for undertaking task / job/ services provided or on sale of goods by one person on behalf of other, then it is commission. Since the benefit given by the assessee to M/s S. Chand Co. Ltd. was in the nature of 'trade discount' and not 'commission', therefore, the assessee was not required to deduct income tax at source u/s. 194H of the Act, thus, no disallowance can be made u/s. 40(a)(ia) of the Act. Therefore, the action of making disallowance u/s. 40(a)(ia) was not called for, as the assessee is not required to deduct TDS u/s. 194H on such discount, which was not in lieu of any services for effecting sales, but was a trade discount. In view of above, Ld. CIT(A) has rightly allowed this ground in favour of the assessee, which does not need any interference on our part, hence, we uphold the action of the Ld.

CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6.2 With regard to disallowance for delay in deposit of Employees Contribution to PF is concerned, we find that it is undisputed that the employees contribution to EPF was deposited well before the due date of filing of return of income. The assessee has explained the circumstances in which such delay has been occurred. Thus, relying on the judgment of CIT vs. Vinay Cement Ltd. (2007) 213 CTR (SC) 268 and CIT vs. AIMIL Ltd. 321 ITR 508 (Del.), the addition was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 08/07/2019.

Sd/-	**Sd/-**
[B.R.R. KUMAR]	**[H.S. SIDHU]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date 08/07/2019

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches