

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 254/VIZ/2019
(Asst. Year : 2016-17)**

DCIT, Central Circle-1, vs. M/s. Sree Murali Mohana Boiled &
Rajahmundry. Raw Rice Mills Pvt. Ltd.,
D.No. 1-54, Komaripalem,
Biccavole Mandalam,
East Godavari District.

(Appellant) PAN No. AAHCS 7807 F
(Respondent)

**C.O.No. 79/VIZ/2019
(Arising out of ITA No. 254/VIZ/2019)
(Asst. Year : 2016-17)**

M/s. Sree Murali Mohana Boiled vs. DCIT, Central Circle-1,
& Raw Rice Mills Pvt. Ltd., Rajahmundry.
D.No. 1-54, Komaripalem,
Biccavole Mandalam,
East Godavari District.

PAN No. AAHCS 7807 F (Applicant) (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri D.V. Subba Rao– Sr.DR
Date of hearing : 07/08/2019.
Date of pronouncement: 23/08/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the Cross Objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals)-3, Visakhapatnam, dated 31/01/2019 for the Assessment Year 2016-17.

2. Facts of the case, in brief, are that assessee is a private limited company engaged in the business of procurement and processing of paddy; sale of rice and broken rice along with its bi-products besides co-generation of a power plant. The assessee filed its return of income by admitting total income of Rs.1,46,06,240/-. The case of the assessee was selected manually for scrutiny as per the CBDT Instruction No. 5/2017, dated 07/07/2017. Accordingly, notice u/sec. 143(2) dated 19/09/2017 was issued and the assessment was completed u/sec. 143(3) of the Act dated 18/01/2018. In the assessment order, the Assessing Officer has noted that the assessee has claimed deduction of Rs. 3,87,08,175/- u/sec. 80IA(iv) in respect of profits derived from co-generation power plant. The assessee furnished the details of income from co-generation plant. It is noticed from the division-wise profit & loss account that total sales of the power has been admitted at Rs. 5,10,96,045/- and sale of steam at Rs.4,07,92,800/-. Against the above receipts, the assessee claimed expenditure under various heads like husk consumption, power plant maintenance, power plant spares & repairs and power

plant salaries etc. and arrived at a net profit of Rs. 3,61,44,742/-.

After making adjustment towards depreciation to the said net profit, the assessee has claimed deduction of Rs.3,87,08,175/- u/sec. 80IA. During the course of assessment proceedings, the assessee was asked to substantiate the claim of deduction u/sec. 80IA. In response, the assessee furnished a note, which was furnished for the earlier years also. The relevant portion of the note as extracted by the Assessing Officer is as under:-

"Our Company Sree Murali Mohana Boiled & Raw Rice Mill Private Limited, Komaripalem has been in the business of rice milling since November, 16, 1983. Our company has started power plant operation since 1st April, 2003 for our internal requirements i.e. steam and power.

The company installed captive power plant in the premises of Rice Mill and put into operation during the Assessment year 2004-05 and since then the company is producing power and steam, the same is being utilized internally to run the rice mill,

The Power Plant Division is equipped with 14 TPH Capacity boiler and 1 MW Capacity Turbine and runs on Back Pressure Technology.

The rice mill for its general rice processing and parboiled rice processing requires steam generated from a boiler. So as to have a captive power generation to meet the steam and power requirements' of the rice mill, we have installed a power generation equipment in our unit of 1 MW capacity. The raw material on which the turbine of the power plant is run with the steam, that has been generated from the boiler wherein the husk is as fuel, which is a bi-product in the rice milling unit is utilized for generating steam in the boiler. The turbine in the power generating unit utilizes only 10% of the heat of the steam generated in the boiler and the remaining heat of the steam is utilized by the rice-mill in its boiled milling unit. Even though the boiled rice mill does not have a power generating unit, it has to

have a boiler with approximately the same capacity and use the husk as the fuel in the boiler to generate the steam for the boiled rice unit. However, the power generating unit requires only 10% of the heat of the steam generated in the boiler and the remaining 90% heat shall be utilized by the rice mill for its processing requirements. Hence the cost of the husk utilized in the boiler is attributable to the rice mill and the 90% of husk cost is relatable to the rice mill unit.

As earlier mentioned even though we do not have the power generating unit we have to spend the same amount of husk for the rice mill for its boiled unit and the same amount of husk is to be utilized for the rice mill for its boiler steam requirement. Hence the husk cost is proportionately apportioned to power generating unit and rice milling unit at 10% and 90% of the husk cost respectively.

In our case the power plant is subsequently established and the rice mill is being run since the past and the heat of steam requirement is more for the parboiled process and only a portion of the heat of steam is being utilized for the power generation.

The turbine capacity of our power plant requires only 10% of the steam generated in our boiler and -hence the cost of husk is taken at 10% of the total husk utilized in the boiler section. Also the remaining 90% of the steam is utilized by the rice mill in its manufacturing activity. Hence the cost of husk is taken at 10% only for arriving at the cost of production in power generation unit. The process of steam generation and its utilization in the turbine is supported / explained by the steam utilization sheet from our Equipment Supplier - Triveni Engineering. The technical calculation of Steam Utilization is annexed herewith.

Power Generation Thermal Calculations

Total Heat supplied = Heat Utilized for power Generation + Heat output utilized for process at Turbine Extraction.

Total heat at turbine inlet = 777.5 k. cal.

Total heat output at the turbine outlet = 694.3 k.cal.

In Let Steam Flow = Outlet Steam Flow

- 1. Heat Drop Across the Turbine 78.02 K. Cal*
- 2. Total Heat converted as power (%) = Heat Utilized in the Turbine x 100/Total Heat Supplied*

$$= 78.02 \times 100/777.5$$

$$= 10.03\%$$

We maintained separate accounts for the expenses incurred for running of the power plant and also passed necessary journal entries regarding the internal transactions of supply of husk from the Rice milling unit and for supply of power from the Power Plant to the Rice mill. The books maintained by us clearly demarcate the expenses and revenues of Rice mill unit and the Power Plant Unit. The captive power plant operated by us gives us a benefit of continuous power supply. We do not sell the power to outside parties.

It is to bring to your kind notice that the allocation of husk cost at 10% of total husk utilization to power plant is completely based on the utilization of steam generated which is used for generating power and the same has been technically proved by the technical team that supplied the power plant machinery, The detailed note explaining why 10% of husk utilization cost taken into power plant maintenance account is separately enclosed.

The company is maintaining all the sub ledgers relating to power plant maintenance, salaries, machinery depreciation a/c, husk utilization a/c and interest on Term Loan taken for acquiring power plant machinery.

The company is arriving the profit earned in power plant, by working out the power units produced with rate adopted equivalent to price paid to AP Transco for procuring power and taking husk utilization with rate equivalent to price paid to outsiders for procuring husk as per the provisions of sec. 80IA(5) where in it is clearly provided that for the purpose of determining quantum of deduction the profit shall be computed as if such eligible business is the only source of income of the company. The expenses of operating the power plant i.e. Husk utilization, power plant maintenance costs, power plant repairs and maintenance, power plant depreciation, power plant interest cost and allocation of general over head are maintained separately and are charged to the Power Plant Unit accordingly.

Hence, as the Company has been following the procedure laid down in section 80/A of the Income Tax Act, 1961, the company has been claiming the deduction as per the provisions of the Act accordingly."

4.2 The above submission filed by the assessee has been perused. On examination of the Profit & Loss a/c relating to

power plant, it is seen that the assessee has debited total cost of husk of Rs.4,53,25,333/- under the head "Husk Consumption" and credited 90% of the cost of husk, i.e. Rs.4,07,92,8001- as "sale of steam". In the earlier years, the assessee has debited only 10% of the total cost of husk to the Profit & Loss a/c and has not shown any income towards sale of steam. Thus, during the current year also, the assessee has apportioned 10% of the total cost of husk towards power plant and the balance 90% towards rice mill. The issue is the allocation of cost of power and fuel. It is observed that the assessee is relying on a mere technical calculation given by a vendor of machinery. The technical calculation reflects the picture of steam utilization for generation of power. The only dispute arose is with regard to allocation of consumption of husk in between the power plant and the rice mill. The assessee has debited only 10% of the total husk as an expenditure based on thumb rule method.

4.3 The issue of husk consumption in the case of power plant of the assessee for the A.Y.2008-09, 2009-10 and 2011-12 was analyzed in detail in the respective assessment orders and husk consumption for the power generation plant was recasted at 55% of the total husk consumption. The assessee stated that claim of 10% husk utilization in the previous years was upheld by the Tribunal and filed copy the Tribunal order. On appeal, the Hon'ble ITAT restricted the husk consumption to 10% for the A.Y.s 2008-09 & 2009-10. However, the said ITAT order was not accepted by the department and appeal to the High Court u/s.260A of the Income Tax Act, 1961 has been preferred on the following grounds:-

- (i) The Hon'ble ITAT concluded that it is only the cost of steam which is to be allocated between Rice mill and Power plant business, It ignored the method of allocation followed by assessee, accepted by the AO and confirmed by the CIT(A) that there should be allocation of cost of husk between Rice mill and Power plant business, even though there is a dispute regarding percentage of cost of husk to be apportioned between rice mill and power plant business. The Tribunal missed the fact that husk is the raw material required for generation of steam, which is turn is used by Power plant for generation of power. Under section 801A(2)(iii) or (iv) and industrial undertaking should be engaged inor in the generation and distribution of power that means the*

words "any business of and industrial undertaking" used in sub-section (1) had to be read in conjunction with the activities of undertaking as defined in sub-section (2) and profits and gains of only those activities could be considered as profits and gains derived from any business of and industrial undertaking. The profits and gains of the eligible unit, i.e. Power unit of the assessee is computed as per the provisions of sec. 31 to 43 of the I.T. Act taking into consideration all business expenses. In the present case, the True profit and gains can be arrived at only after taking into consideration the cost of Husk, the basic raw material and all the relevant expenses. The Tribunal erred in concluding that only the cost of the steam needs to be apportioned between Power plant and Rice mill.

- (ii) According to sec. 801A(5), the quantum of deduction shall be computed as if the eligible business "power generation" is the only source of income of the assessee during the previous year relevant to assessment year. In treating the "power generation" as only source of income, the corresponding expenditure i.e. all costs attributable and relatable in arriving at the income need to be accounted for in the heads of the eligible business. The section 801A (1) specifically mentions that eligible profits & gains should be derived by and from its business of "Power generation".*
- (iii) The assessee failed to maintain separate books of account for the eligible unit of Power generation. As decided by the Apex Court in Arisudana Spinning Mills Ltd. Vs. Commissioner of Income-Tax (3481TR 385) (SC), The assessee ought to have maintained a separate account in respect of Power unit and Rice Mill unit. If the assessee had maintained a separate account, then, in that event, a clear picture would have emerged which would have indicated the income accrued from the eligible unit with corresponding expenditure. There is no known reason why separate accounts were not maintained by the assessee.*
- (iv) The basic undisputed fact is that assessee company requires steam for both power generation and rice milling. Assessee by using back pressure turbine technology is utilizing the same steam both for the purpose of power generation and for the purpose of rice boiling/drying. In this situation, it is reasonable to allocate the expenditure on steam generation to both power plant and rice milling plant. Even if it is argued that power plant is to be seen*

as separate unit and the entire consumption of husk should be treated as utilized for the purpose of power generation, it cannot be disputed that steam in this case is a by-product of power generation and the same is capable of being utilized by rice plant. As the husk generated by rice miller is an input for the power plant, similarly steam generated by the power plant is an input for rice mill. If entire husk is treated as input cost of power generation unit the assessee is entitled to claim the sale value of steam as income and this income would have been treated as income deriving from the industrial undertaking.

- (v) *Further, ITAT is not correct in holding that filing for Form No. 10CCB report is not mandatory and that it can be filed at any time during the assessment proceeding and claim of exemption u/s. 80IA is not maintainable. The AR ought to have drawn support in this regard from the decision of Hon'ble P & H High Court in the case of CIT Vs. Jaideep Industries reported in 180 ITR 81 wherein it was held that audit report u/s. 80J was a mandatory requirement. Since the provisions of 80J and 80IA are akin, filing of 10CCB report is mandatory requirement.*

In order to keep the issue alive and to maintain consistency in the stand taken by the department on this issue, husk consumption for the power plant during the year under consideration is also taken at 55%. Accordingly, the husk consumption of the power generation plant is recasted at Rs.2,49,28,9331- (55% of Rs.4,53,25,333/which is 55% of the total husk consumed in relation to the power generated plant."

3. The Assessing Officer after considering the explanation given by the assessee has observed that on examination of the profit & loss account relating to the power plant, it is seen that the assessee has debited total cost of husk of Rs. 4,53,25,333/- under the head 'Husk Consumption' and credited 90% of the cost of husk i.e. Rs. 4,07,92,800/- as 'sale of steam'. In the earlier years, the

assessee has debited only 10% of the total cost of husk to the profit & loss account and has not shown any income towards sale of steam. Thus, during the current year also, the assessee has apportioned 10% of the total cost of husk towards power plant and the balance 90% towards rice mill. The issue is the allocation of cost of power and fuel. It is observed that the assessee is relying on a mere technical calculation given by the vendor of machinery. The technical calculation reflects the picture of steam utilization for generation of power. The only dispute arose is with regard to allocation of consumption of husk in between the power plant and the rice mill. The assessee has debited only 10% of the total husk as expenditure, based on thumb rule method. The Assessing Officer further noted that the issue of husk consumption in the case of power plant of the assessee for the A.Y. 2008-09, 2009-10 & 2011-12 was analyzed in detail in the respective assessment orders and husk consumption for the power generation plant was recasted at 55% of the total husk consumption. The assessee has stated that claim of 10% husk utilization in the previous years was upheld by the tribunal and filed copy of the Tribunal order. The Hon'ble ITAT restricted the husk consumption to 10% for the A.Ys. 2008-09 & 2009-10.

However, the said ITAT order was not accepted by the department and appeal has been filed to the High Court u/sec. 260A of the Act. Accordingly, in order to keep the issue alive and to maintain consistency in the stand taken by the department on this issue, husk consumption for the power plant during the year under consideration is also taken at 55%. Accordingly, the husk consumption of the power generation plant is recasted at Rs.2,49,28,933/- which is 55% of the total husk consumption in relation to the power generated plant and accordingly worked out net profit at Rs. 1,83,11,775/-

4. On appeal, Id. CIT(A) by following the order passed by the Tribunal in earlier years, allowed the entire claim made by the assessee u/sec. 80IA by considering the husk consumption for the power plant at 10% shown by the assessee. The relevant portion of the order is extracted as under:-

"4.0) The only issue in the appeal is the action of the Assessing Officer in restricting the claim of deduction u/sec. 80IA by taking husk consumption for power plant at 55% as against 10% shown by the assessee. The issue is decided in favour of the assessee by orders of CIT (A) and ITAT in earlier years as mentioned by the Assessing Officer in the order. Respectfully following the same, it is held that the deduction u/sec. 80IA as claimed by the assessee be allowed. The addition made is deleted.

5. Aggrieved, the Revenue is in appeal before the Tribunal.

6. When this appeal is taken up for hearing, Id. counsel for the assessee has submitted that the issue involved in this appeal is squarely covered by the coordinate bench of the tribunal in assessee's own case in the A.Ys. 2008-09 & 2009-10 by order dated 28/04/2014 and dismissed the appeal of the Revenue. He relied on the decision of the very same Bench where AM & JM are both the Members, have passed the order in ITA No. 276/VIZ/2018, dated 03/01/2019 for the A.Y. 2010-11.

7. On the other hand, Id.DR strongly supported the order of the Assessing Officer.

8. We have heard both the sides, perused the material available on record and orders of the authorities below.

9. After careful consideration of the facts of the case, we find that the only issue involved in this appeal is attribution of husk consumption to the power plant by the assessee at 10% is correct or not. The coordinate bench of the tribunal in the A.Ys. 2008-09 & 2009-10 has considered the issue and held as under:-

"16. On a careful examination, we are inclined to accept the submissions of the Ld. Counsel for the assessee for the reason that the cost of steam is what is to be allocated between the power plant and the rice mill. There is no logic in segregating the cost into two parts and allocating the normal loss in the generation of steam at 50-50 and therefore allocating the husk expenses at 15.75% to the power generation plant and 84.25% to the rice mill. Once we come to our conclusion that 10% of the

steam is utilized by the power generation plant, then all the cost i.e. attributable and relatable to the generation of steam has to be allocated only on that basis. The cost of steam cannot be saggregated into that which is incurred up to a particular point and cost incurred after a particular point. This to our mind is not logical. Thus the allocation made by the assessee to our mind is justified. Hence, we allow this ground of the assessee."

The very same issue has been considered by the coordinate bench of the tribunal in assessee's own case in the A.Y. 2010-11 and held as under:-

7. We have heard both the parties and perused the material placed on record. With regard to the issue of consumption of husk for captive power plant, the same is covered by this Tribunal order in assessee's own case for the A.Ys. 2012-13 and 2015-16 in ITA No. 293-296/VIZ/2018. Accordingly the appeal of the assessee on this ground is allowed and the AO is directed to recomputed the income relating to captive power plant estimating the consumption of husk expenditure @10% of total husk consumption as decided in our earlier order."

10. Therefore, respectfully following the decisions of the coordinate bench of the tribunal for the A.Ys. 2008-09 to 2010-11, we find no infirmity in the order passed by the order of the Id.CIT(A). Accordingly, this appeal filed by the Revenue is dismissed.

11. So far as Cross Objection filed by the assessee is concerned, it is only supportive to the order of the Id. CIT(A). In view of the

dismissal of the Revenue's appeal, this cross objection filed by the assessee has become infructuous and is dismissed accordingly.

12. In the result, appeal filed by the Revenue and the cross objection filed by the assessee are dismissed.

Order Pronounced in open Court on this 23rd day of August, 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 23rd August, 2019.

vr/-

Copy to:

- 1. The Assessee – M/s. Sree Murali Mohana Boiled & Raw Rice Mills Pvt. Ltd., D.No. 1-54, Komaripalem, Biccavole Mandalam, East Godavari District.*
- 2. The Revenue – DCIT, Central Circle-1, Rajahmundry.*
- 3. The Pr.CIT (Central), Visakhapatnam.*
- 4. The CIT(A)-3, Visakhapatnam.*
- 5. The D.R., Visakhapatnam.*
- 6. Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.