

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 512/Del/2017  
(Assessment Year: 2008-09)

M&B Footwear Pvt. Ltd, B-2/3, Mohan Cooperative Industrial Estate, Mathura Road, Badarpur, New Delhi PAN: AAACM6383R	Vs.	DCIT, Circle-16(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	19/08/2019
Date of pronouncement	11/11/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-19, New Delhi dated 02.11.2016 for the AY 2008-09.
2. The assessee has raised the following grounds of appeal:-
  - “1. That the Learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the order of assessment framed under section 143(3) of The Income Tax Act, 1961 (The Act) holding that the transfer of goods from Noida to Baddi was not at an arm’s length price and warranted application of section 80 IA (8) resulting in reduction of profits of Baddi unit by Rs. 1,39,85,181/-.
  2. That the Learned Commissioner of Income Tax (Appeals) has erred both the law and on facts in upholding action of the Assessing Officer in rejecting the certificates issued by the practicing Cost Accountant as per and in terms of Cost Accounting Standards CAS-I, and CAS-IV in respect of the valuation of goods ( Shoe uppers) transferred from Noida to Baddi unit accepted under the excise laws as well holding that these certificates do not throw any light upon the exact costing of the shoe uppers transferred, surely on the basis of surmises and suspicion rather on the basis of any legal and valid consideration.
  2. That the Learned Commissioner of Income Tax (Appeals) has erred both the law and on facts in upholding action of the Assessing Officer in rejecting the certificates issued by the practicing Cost Accountant as per and in terms of Cost Accounting Standards CAS-I, and CAS-IV in

*respect of the valuation of goods ( Shoe uppers) transferred from Noida to Baddi unit accepted under the excise laws as well holding that these certificates do not throw any light upon the exact costing of the shoe uppers transferred, surely on the basis of surmises and suspicion rather on the basis of any legal and valid consideration.*

3. *That the Learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in making further allocation of Cartage inward and Diesel & oil expenses amounting to Rs. 27,86,033/- towards Baddi unit from Noida holding that these expenses might have been incurred and booked in the books of account of Noida but the fact remains that same have been incurred for the company as a whole and thus should be allocated between both Baddi & Noida on the basis of production undertaken in both the units.*
4. *That the Learned Commissioner of Income Tax (Appeals), has erred both in law and on facts in making further allocation of depreciation of cooperate office amounting to Rs. 48,75,448/- towards Baddi unit from Noida, holding that depreciation of Corporate Office requires to be allocated to the Baddi unit as common corporate cost.*
5. *That the Learned Commissioner of Income Tax (Appeals), has erred both in law and on facts in rejecting the accounts of the assessee in their present form holding that inappropriate of the expenses and ad-hoc application of manufacturing expenses makes it impossible to ascertain the correct results of the respective units and thus re-casted the manufacturing account of both Baddi and Noida and made further allocation in manufacturing expenses of goods transferred resulting into reduction of profits of Baddi Unit by Rs. 63,23,700/6. That the Learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in upholding the order of assessment as assessment had been framed in complete violation of the principles of natural justice and thus such an order of assessment was vitiated both on fact and in law and hence was liable to be quashed.*
7. *That the adverse findings recorded by the learned Commissioner of Income Tax ( PP ) Addl. Commissioner of the Income Tax are perverse and have been recorded without appreciating the submissions made and die evidences/material produced on record and hence such adverse findings are vitiated and deserves to be deleted.*
8. *That in the circumstances in the case and in law, the impugned order passed by the learned commissioner of Income tax ( Appeals) upholding the order of the assessment passed b, the Add, commissioner of income tax is based on assumptions/ presumptions , whims and fancies, conjectures, surmises, preconceived notions and incorrect application of law and therefore liable to be quashed.*
9. *The appellant craves to leave, add, delete or modi, any grounds of appeal a, the time of hearing of Rs. 1,39,85,181/-.*

*It is therefore prayed that the addition made by the Ld. Addl. Commissioner o, Income Tax an upheld by the learned Commissioner of*

*Income Tax (Appeals, he held to be no, in accordance with law and therefore the additions so made along-with interest levied be Kindly deleted and appeal of the appellant company be kindly allowed.”*

3. Briefly stated the facts of the case are that the assessee is a company engaged in manufacturing and sale of footwear and allied products. It filed its return of income on 25/9/2008 at after claiming deduction under section 80 IC of the income tax act of INR 74394991/-. The assessee was paying tax on book profit.
4. During the course of assessment proceedings the learned assessing officer noted that there is a decline in the gross profit and net profit ratio of the 2 units of the assessee. Assessee has Noida unit and another unit at Baddi, which is eligible for deduction u/s 80 IC of The Income Tax Act. In the last year Noida unit assessee has earned gross profit of 25% whereas in the Badddi unit assessee has earned gross profit of 53% in last year, whereas in the current year the gross profit in Noida unit was 51% whereas the gross profit in baddi unit was 55%. However the net profit in Noida unit was (-) 4% whereas the net profit in Badddi Unit was 12%. Based on this the assessee was asked to file the transactions of inter-unit and explanation with respect to the provisions of section 80 IA (8) of the income tax act. The assessee submitted its reply stating that inter-unit sale of goods and services basis of price allocation of common expenses have been done consistently at market rate. It was further stated that common administrative selling and finance expenses have been apportioned on the basis of sales. It was further stated that in case of shoe upper transfer value addition has been done and the excise duty is payable of the raw material at cost plus 10% mark up. Assessee further stated that Baddi unit has incurred administrative expenses of INR 11,600,000 on its own and the common expenses are allocated from the Noida Unit are Rs. 26,31,00,000. Assessee further pleaded that the gross profit ratio of both the units are almost same and loss is incurred on account of low recovery of fixed cost. The learned assessing officer rejected the explanation of the assessee and found that there is a disproportionate allocation of expenditure as the turnover of baddi unit is Thrice but the expenses allocated are disproportionate. He further noted that raw material is

transferred by Noida unit to baddi unit in semi finished items such as sole uppers at cost plus 10 % mark up basis which is not the market price. Material is transferred at cost and in case of Semi finished goods where the value addition cost-plus markup as per excise rule is charged. He further noted that no quality control cost and research and development cost has been shown, and no administrative over head has been shown in some cases. Based on this he reached at conclusion that there is a wrong allocation of salaries, wages, marketing expenses etc. He noted that the gross profit ratio of 55.28 percentage and net profit ratio of 12.84 percent in case of Baddi unit has been shown in comparison to the gross profit ratio of 51% and net profit ratio of -4.35% in case of Noida Unit . This is the reason that manufacturing cost of baddi unit is 7.4% of sales vis a vis 24% of Noida Unit. Therefore he invoked the provisions of subsection 8 of section 80 IA of the act. He further noted that the sale of Shoe upper and soles unit Noida to Baddi unit was of INR 6 8285030/- which is not at market rates and thus in contravention of the provisions of section 80 IA (8) of the income tax act. Based on this he computed the sum of INR 15,000,000 difference in market rates and the transfer price of material transferred in manufacturing expenses. Accordingly computed the deduction u/s 80 IC to the extent of profit of baddi Unit at Rs. 76823059/-.The learned assessing officer further found that assessee has paid a royalty of INR 2 6086786/-. On perusal of the agreement of the royalty he noted that royalty payment is made in of rights, transfer of technical know-how, facilities and technical assistance granted to the assessee by Lee Cooper and Provogue. He held that the benefit to the assessee is of an enduring nature and he disallowed 25% of the royalty payment of INR 2 6086786/- amounting to INR 6 521697/- as capital expenditure and added back to the income of the assessee. He further allowed depreciation at the rate of 25% of this amount and the net addition of 70% in baddi and 30% in Noida unit was made. Accordingly he made an addition of INR 6 521697. According to this the royalty payment of INR 3 423890/- was considered to be related to Baddi Unit which is adjusted while working out the eligible profit for deduction. The assessee has also paid cess on royalty of INR 1 150721/- and therefore he further made an

addition of 25% as capital expenditure and allowed 75% he also accordingly allocated the above expenditure in both the units. He further noted that assessee has not deducted at tax at source under section 194J on royalty payment of INR 3072360 and therefore disallowed the same for non-payment of the taxes. However he made the adjustment to the Baddi unit. Accordingly the assessment u/s 143 (3) of the income tax act was passed on 30/12/2010 determining the total taxable income of the assessee at INR 5 751324/- . Further the deduction u/s 80 IC of the income tax act of INR 74394991 was allowed instead of INR 76823059/-.The assessee being aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A who partly allowed the appeal of the assessee.

5. Assessee being aggrieved with the order of the learned CIT – A has preferred this appeal before us.
6. Despite notice to the assessee none appeared and therefore the issues are decided on the merits of the case as per information available on record.
7. The learned departmental representative vehemently supported the orders of the lower authorities.
8. Assessee has raised in fact 9 grounds of appeal with respect to the reduction of the profits of the unit by INR 13985181/-. The learned CIT – A considered the certificates produced by the assessee with respect to the cost accounting method followed by the assessee as per the Excise law for transfer of goods . Assessee claimed that assessing officer should have accepted the same. The learned CIT appeal noted that the certificate shows the total cost of material consumed, direct expenses and salaries, direct expenses and wages etc. In profit thereon the mark up of 10% was made. He noted that the certificates do not have any mention in respect of quantitative details of material consumed as to how the material cost has been calculated. Further the certificates also did not show how the allocation of administrative overheads relating to the production activity has been made. He further noted that in some of the certificates the allocation of corporate expenses has been made while in some other it has been completely ignored. He therefore held that the certificates do not throw any light upon the exact costing of the material transferred and therefore the certificates cannot be relied upon to determine the arm's-length price of the

material transferred. He further noted that the certificates might have some relevance from excise point of view however for the purpose of determination of income they do not have any relevance as the material is required to be transferred at the market rate for the purpose of working out the eligible profit. He further noted that assessee has not considered the market price of the goods that should be determined but has only taken the direct cost of material and manufacturing overheads. He therefore held that the assessing officer is correct in rejecting the cost certificates produced by the appellant in making an adjustment in view of the provisions of section 80 IC (7) read with section 80 IA (8) of the income tax act. With respect to the allocation of the expenses, he noted that the assessee has produced unit wise chart in which the allocation of the various selling and administrative expenses have been made on the basis of 70% and 30% between baddi and Noida unit in percentage of sales. He noted that assessee has not allocated the depreciation in respect of corporate office. He noted that the corporate office render services to both therefore there was no reason for non-allocation of depreciation between the 2 units especially when all other expenses have been allocated in the ratio of 70: 30. He further noted that cost of cartages and diesel expenditure has also not been properly allocated. He therefore noted that a sum of Rs 2786033/- should be further allocated towards Baddi unit from Noida Unit and further similarly depreciation of the corporate office a sum of INR 4875448/- is required to be allocated to the baddi Unit as common corporate cost. With respect to the Inter unit transfer he noted that appellant has charged 20% of the material cost as the manufacturing expenses and further assessee has charged 10% mark up in respect of material cost and manufacturing expenses. He after considering the same noted that baddi unit was showing 63% margin as compared to 57% by Noida unit in respect of the cost of material after the complete verification of the various items of the profit and loss account the learned CIT – A has worked out reduction of profits of Baddi unit by Rs. 13985181/-. He further noted that the transfer of goods from Noida to Baddi Unit was not at arm's-length and warranted applications of the provisions of section 80 IA (8) and therefore there should be an adjustment in profit of INR 13985181/-. According to us

the learned CIT – A has considered all the aspects of the computation of the eligible income for deduction u/s 80IC of the act. The learned CIT – A has given the detailed reason with respect to the allocation of the cartage expenses and diesel and oil expenses amounting to INR 2 786033/- towards the Badddi unit from the Noida unit. He also considered the allocation of the depreciation of the corporate office as common cost. He further examined the claim of the assessee with respect to the allocation of the manufacturing expenses between the 2 units with respect to the transfer of goods which resulted into reduction of the profits of the eligible unit. As Such he has considered all the arguments of the assessee with respect to the determination of the eligible profit. Thus, we do not find any infirmity with respect to any of the issues raised by assessee in the grounds of appeal. In view of the detail finding of the learned CIT – A, we do not find any infirmity in the order. Accordingly all the grounds of appeal are dismissed.

9. In the result appeal filed by the assessee in ITA number 512/Del/2017 is dismissed.

Order pronounced in the open court on 11/11/2019.

-Sd/-  
(K.N.CHARY)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 11/11/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi