

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1063/Del/2017
Assessment Year: 2012-13

Income Tax Officer, Ward-18(3), New Delhi	Vs.	M/s. Nirja Publishers & Printers Pvt. Ltd., 7361, Ravindra Mansion Ram Nagar, New Delhi
		PAN :AAACN4282E
(Appellant)		(Respondent)

Appellant by	Shri F.R. Meena, Sr.DR
Respondent by	Shri V.K. Bindal, CA & Ms. Sweety Kothari, CA

Date of hearing	04.11.2019
Date of pronouncement	14.11.2019

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 05/12/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-6, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

1. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in upholding disallowance of Rs. 10,36,64,331/- u/s 80IC of the Income Tax Act, 1961 (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?*

2. *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. 3,96,77,265/- u/s 40(a)(ia) of the Act for not deducting the tax at source on the commission payment made to M/s. S. Chand & Company Pvt. Ltd. under the guise of "Trade Discount"?*
3. *Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in holding that the employee's contribution to the ESI and Employees Provident Fund (EPF) which is deemed as the employer's income u/s 2(24)(x) of the Act and which is subject to deduction u/s 36(l)(va) of the Act is also governed by Section 43B of the Act?*
4. *Whether, in facts and circumstances of the case, Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of earlier order in the assessee's own case despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate proceedings year AUTHORIZATION U/S 253(2) OF THE INCOME TAX ACT 1961, ARISING OUT OF APPELLATE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEAD-6, NEW DELHI'S APPEAL NO. 672/14-15 DATED 05.12.2016 FOR ASSESSMENT YEAR 2012-13 IN THE CASE OF M/S NIRJA PUBLISHERS & PRINTERS PRIVATE LIMITED (PAN : AAACN4282E).*
5. *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.*

2. Briefly stated facts of the case are that the assessee-company was engaged in the business of printing and publication of the books. During the year under consideration, the assessee filed its return of income on 31/08/2012, declaring total income of ₹ 1,97,210/- and declared book profit of ₹ 10,40,36,033/- under section 115 JB of Income Tax Act, 1961 (in short 'the Act'). The case of the assessee was selected for scrutiny and in the scrutiny assessment completed on 18/03/2015 under section 143(3) of the Act, the Assessing Officer following the order of his predecessor for assessment year 2011-12, made following three additions/disallowances:

<i>serial No.</i>	<i>addition/disallowances</i>	<i>amount</i>
1.	<i>Disallowance of deduction under section 80 IC of the Act</i>	<i>Rs.10,36,64,331/-</i>
2.	<i>Disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source on trade discount</i>	<i>Rs.3,96,77,265/-</i>
3.	<i>Disallowance under section 36(1)(va) for late deposit of employee contribution to PF and ESI</i>	<i>Rs.24, 631/-</i>
	<i>Total</i>	<i>Rs.14,33,66,227</i>

- 3.** The Ld. CIT(A) also deleted all the three additions following the finding of his predecessor for assessment year 2011-12.
- 4.** At the outset, the Ld. counsel of the assessee submitted that in assessment year 2011-12, the learned CIT(A) deleted all the three additions and the Revenue filed appeal against the order of the Ld. CIT(A). He submitted that the Tribunal in A.Y. 2011-12 has upheld the order of the learned CIT(A) on all the three issues. Accordingly, he submitted that issue in dispute raised in all the grounds, being covered by the order of the Tribunal in ITA No. 1843/Del/2016 for assessment year 2011-12, the impugned order of the learned CIT(A) might also be upheld.
- 5.** The Ld. DR, on the other hand, relied on the finding of the Assessing Officer (AO) and submitted that additions made by the AO might be sustained.
- 6.** We have heard rival submissions of the parties and perused material on record including the order of the Tribunal in ITA No. 1843/Del/2016 for assessment year 2011-12. The Tribunal has decided all the three issue raised in the grounds of the appeal as under:

“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 Service 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 (Kerala) (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. It is undisputed that both the Assessing Officer and the learned CIT(A) has followed order of their predecessor in assessment year 2011-12 and the facts and circumstances of the present case being identical to assessment year 2011-12, respectfully following the finding of the Tribunal (supra), all the ground of the appeal of the Revenue are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 14th November, 2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th November, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi