IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI

BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 3075/DEL/2008 (A.Y 2004-05)
(THROUGH VIDEO CONFERENCING)

M/s Sheena Industries Ujha Road Panipat **(APPELLANT)**	Vs	ACIT Circle- Panipat **(RESPONDENT)**

I.T.A. No. 2958/DEL/2008 (A.Y 2004-05)
(THROUGH VIDEO CONFERENCING)

Deputy Commissioner of Income Tax, Central Circle-Karnal **(APPELLANT)**	Vs	M/s Sheena Industries Ujha Road Panipat **(RESPONDENT)**

Appellant by	**Dr. Rakesh Gupta, Advocate**
Respondent by	**Sh. H. K. Choudhary, CIT(DR)**

Date of Hearing	**15.02.2021**
Date of Pronouncement	**30.03.2021**

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and Revenue against order dated 18.07.2008 passed by CIT (A)-Karnal for assessment year 2004-05.

2. The grounds of appeal are as under:-

I.T.A. No. 3075/DEL/2008 (A.Y 2004-05) Assessee's appeal

1. *That having regard to the facts and circumstances of the case Ld.CIT(A) erred in law and on facts in not giving depreciation @ 50% on all the items of*

plant and machinery as mentioned at page 7 of the CIT (A)'s order and has further erred in observing that item No.31 to 35 are not covered under TUF Scheme.

2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) (A) has erred in law and on facts in not reversing action of Ld. AO in not allowing the deduction u/s 80 HHC on DEPB in full as claimed by the assessee in his return of income.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) (A) has erred in law and on facts in not reversing action of Ld. AO in not allowing the deduction u/s 80 IB on the amount of DEPB and duty draw back in full as claimed by the assessee in his return of income, more so when the assessee id supporting manufacturer and more so when Hon'ble ITAT has allowed this claim in earlier years.*

4. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in sustaining the disallowance of Rs. 1,3 8,7047- out of Rs.25,48,292/- on account of foreign traveling expenses.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.8,15,788/- on account of interest.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in treating the income of Rs.2,18,413/- on account of interest received as income from other sources.*

7. *That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in deleting an amount of Rs.77,413/- receivable from foreign buyer out of export turnover for computation of deduction u/s 80 HHC.*

8. *That having regard to the facts and circumstances of the case, has erred in law and on facts in confirming the action of Ld. A the deduction u/s 80HHC only after reducing the amount of 80IB from the amount of business profit.*

9. *That in any view of matter and in any case, action of Ld. CIT (A) in not*

reversing the action of Ld. AO in disallowing the claim of deduction u/s 80HHC and 80 IB is illegal, void ab-initio, arbitrary, unjustified, against the principles of natural justice and contrary to the law and facts and has further erred in not quashing the impugned assessment framed by Ld. A.O being illegal void ab initio, in violation of principles of natural justice."

I.T.A. No. 2958/DEL/2008 (A.Y 2004-05) Revenue's appeal

1. *The Ld. CTI'(A) has erred both in law and on facts of the case in allowing depreciation* (a) *50% on machinery purchased for Rs.23,70,949/- under TUF Scheme as against depreciation @ 25% allowed by the A.O.*

2. The Ld. CIT(A) has erred both in law and on facts of the Case in deleting an addition of Rs.5,51,19,865/- made by the A.O. on account of difference in the value of stock as per stock statement submitted to the Bank and as declared in the trading results of the assessee.

3. The Ld. CIT(A) has erred both in law and on facts of the Case in allowing deduction u/s 80HHC to the assessee on the export incentive, being supporting manufacturer.

4. The Ld. CIT(A) has erred both in law and on facts of the case in deleting an addition of Rs.24,09,588/- out of total addition of Rs.25,48,292/- made by the A.O. by disallowing foreign traveling expenses.

5. The Ld. CIT(A) has erred both in law and on facts of the case in deleting an addition of Rs. 17,56,508/- made by the A.O. on account of building repair and maintenance expenses.

4/6. The Ld. CIT(A) has erred both in law and on facts of the case in deleting an addition of Rs. 1,48,249/- made by the A.O. by disallowing export promotion expenses.

5/7. The appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.

6/8. It is prayed that the order of the Commissioner of Income-tax (Appeals) be set aside and that of the A.O be restored."

3. The assessee is a supporting manufacturer as well as direct explorer of home furnishing products. The return of income for the Assessment Year 2004-05 was filed on 1/11/2004 declaring total income of at Rs. 1,19,42,960/-. The

return was processed u/s 143(1) of the Income Tax Act 25/01/2005. Subsequently, the case was selected for scrutiny and notice u/s 143(2) dated 25/1/2005 was served upon the assessee. In response to the said notice Chartered Accountant of the assessee attended the assessment proceedings on behalf of the assessee and submitted necessary details and clarification. The Assessing Officer observed that in the Financial Year 2003-04, the export turnover of the assessee is more than 10 crores. Therefore, it is covered under 3rd proviso to Sub Section 3 of Section 80HHC of the Income Tax Act, 1961. The assessee was asked to file justification regarding its claim of deduction u/s 80HHC in view of the taxation laws (Amendment) Act 2005, wherein the deduction u/s 80HHC of the Act is not allowable on the export incentives in the shape of DEPC Premium, if the export turnover exceeds Rs. 10 crores unless the assessee proves certain conditions. The assessee filed its submissions which was considered by the Assessing Officer and thus held that deduction u/s 80HHC is to be allowed as per the provisions of Sub Section (1A) read with Sub Section (3A) of Section 80HHC of the Act read with Clause (baa) of Explanation to Section 80HHC of the Act as the assessee is a supporting manufacturer. The Assessing Officer further notice that the assessee claimed deduction u/s 80IB of the Act for which the assessee filed its explanation. The Assessing Officer after taking into account the submissions of the assessee held that deduction u/s 80IB is not allowable on the amount of export incentives and the assessee wrongly claimed deduction u/s 80IB on export incentives and, therefore, disallowed the same. The Assessing Officer in respect of computation u/s 80HHC and 80IB notice that the assessee has computed deduction u/s 80HHC and 80IB ignoring the provisions of Section 80IB (13) read with 80IA (9). The assessee was asked to justify its claim for which the assessee filed its submissions. After taking into account the submissions, the Assessing Officer held that deduction u/s 80HHC and 80IB is to be allowed as per the provisions of Section 80IB (13) read with Section 80IA (9) of the Act. The Assessing Officer further made an observation that as the export proceeds of Rs. 77,413/- received from M/s R D Martin Inc. USA as

on 31/03/2004 could not be realized till 30/09/2004, the same should be deducted from export turnover for computation of deduction u/s 80HHC of the Act. Further, the Assessing Officer observed that since the interest received from bank on FDR and income on account of prior period items are not income derived from business, therefore, these are to be treated as income from other sources and not the business income as these have been treated by the assessee. The Assessing Officer made additions of Rs. 5,51,19,865/- which is a difference between the value of stock as on 31/3/2004 computed on the basis of value of stock as on 29/2/2004 as per the stock has statement submitted to the said bank, New Delhi and value of the closing stock as on 31/3/2004 as shown in the balance sheet and the same added to the income of the assessee, thereby holding that the same is deemed income of the assessee u/s 69 of the Act and ha to be assessed under the head income from other sources. The Assessing Officer made an addition of Rs. 5,50,156/- in respect of the claim related to access depreciation on machinery under TUFS and the same was disallowed in the hands of the assessee. The Assessing Officer also made addition on Rs. 25,48,292/- related to expenses incurred on foreign travel in the hands of the assessee. The Assessing Officer made further addition of Rs. 8,15,788/- towards pro rate interest on loss paid to the extent the advance which was made to the sister concern and others without carrying any interest and without any business purpose and without any business purpose and disallowed the same u/s 36(1) (iii) of the Act. The Assessing Officer also made addition of Rs. 17,56,508/- related to expenses incurred by the assessee under the head building repairs and maintenance. Lastly, the Assessing Officer made an addition of Rs. 1,48,249/- on account of export promotion expenses which are in personal in nature.

4. Being aggrieved by the assessment order, the assessee filed appeal before CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. As regards to assessee's appeal, the Ld. AR has not pressed Ground No.

1, 4, 6, 7 and further submitted that Ground No. 9 is a general ground. Hence, Ground No. 1, 4, 6, 7 are dismissed and Ground No. 9 is adjudicated in respect of specific grounds taken by the assessee before us.

7. As regards to Ground Nos. 2, the Ld. AR submitted that the CIT(A) erred in not allowing the deduction under Section 80HHC on DEPB in full as claimed by the assessee in his return of income. The Ld. AR submitted that the issue is settled by the various decisions of the Hon'ble High Courts and Apex Court, hence the issue may be remanded back to the file of the Assessing Officer for fresh adjudication in light of the law laid down by the various decisions of the Hon'ble High Court and Supreme Court. As regards to Ground No. 3, the Ld. AR submitted that the CIT(A) erred in not allowing the deduction under Section 80IB on the account of DEPB and duty draw back in full as claimed by the assessee in his return of income, as the assessee is supporting manufacturer and the Tribunal in earlier years had allowed this claim. Thus, the Ld. AR submitted that the issue may be remanded back to the file of the Assessing Officer for fresh adjudication on merit and on the law laid down by various decisions of the Hon'ble High Court and Supreme Court especially in case of CIT vs. Avani Export [2005] 232 Taxman 357 (SC) and CIT vs. Carpet India (2020) 424 ITR 316 (SC).

8. The Ld. DR relied upon the order of the CIT(A) and Assessment Order, but submitted that in light of the decisions of the Hon'ble High Court and Supreme Court, both the issues needs verifications and therefore, be remanded back to the file of the Assessing Officer.

9. We have heard both the parties and perused the material available on record. Ground Nos. 2 and 3 as submitted by both the parties have to be looked into the context of the law laid down by various decisions passed by the Hon'ble High Courts as well as the Supreme Court in cases of Avani Exports (supra) and Carpet India (supra). Hence, we are remanding back both the

issues to the file of the Assessing Officer for fresh adjudication in light of the provisions of law settled by the judicial forums including Hon'ble Apex Court. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground Nos. 2 and 3 of the assessee's appeal are partly allowed for statistical purpose.

10. As regards to Ground No. 5 relating to disallowance of Rs. 8,15,788/- on account of interest, the Ld. AR submitted that there could be no disallowance of interest in respect of advances given in earlier years as no findings was ever recorded in those years that such advances were made for non business purpose or such advances were made out of the interest bearing borrowed funds for advancing these amounts. The Ld. AR pointed out from copies of accounts enclosed in the paper book that there were opening balances and these advances were made for the purpose of business in ordinary course of the business of the assessee. Further, the Ld. AR pointed out that no interest bearing borrowed funds were used for giving these advances as is clear from the fact that these amounts were paid from the current account.

11. The Ld. DR relied upon the assessment order and the order of the CIT(A).

12. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that from the paper books pointed out by the Ld. AR during the hearing, it can be seen that these advances were not from the interest bearing borrowed funds. Thus, the advances were exclusively for the purposes of business of the assessee and the Assessing Officer has not taken cognizance of the same. Further while disallowing the claim of the assessee, the Assessing Officer failed to establish the nexus between the amount not given and the advances. Thus, the CIT(A) was not correct in confirming this addition. Hence, Ground No. 5 of the assessee's appeal is allowed.

13. As regards to Ground No. 8, relating to allowability of deduction u/s 80HHC by the Assessing Officer only after reducing the amount of deduction u/s 80IB from the amount of business profit, the Ld. AR submitted that this issue is decided against the assessee as per the decision of the Hon'ble Delhi High Court in case of Great Eastern Exports Ltd. vs. CIT order dated 04.12.2010.

14. The Ld. DR relied upon the assessment order and the order of the CIT(A).

15. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Hon'ble Delhi High Court in case of Great Eastern Exports Ltd. (Supra) held that the deduction allowed u/s 80-IA had to be reduced from the profits for computing deduction u/s 80HHC. The same principle will be applicable in the present case, hence, Ground No. 8 is dismissed.

16. Thus, the appeal filed by the assessee being ITA No. 3075/Del/2008 is partly allowed for statistical purpose.

17. Now we are taking up Revenue's appeal being ITA No. 2958/DEL/2008.

18. As regards to Ground No. 1 of the Revenue's appeal relating to depreciation @ 50% on machinery purchased for Rs. 23,70,949/- under TUF Scheme allowed by the CIT(A) as against the depreciation @ 25% allowed by the Assessing Officer, the Ld. DR submitted that the Assessing Officer has given a clear finding that the description of various machineries purchased under TUFS as per the copy of account of machinery purchased under TUFS/Bills or Vouchers of machinery purchased was not as per the Annexure 'F1' giving he list of processing machinery eligible under TUFS for process house for yarn/fabric/garments/made ups (other than wool and polyester/wool blades and knits) issued by Ministry of Textiles for technology of up-gradation fund

scheme for textile and jute industries as submitted by the assessee. Thus, the assessee does not fulfill the requirements of TUFS and hence, the Assessing Officer rightly restricted the claim to 25%.

19. The Ld. AR relied upon the order of the CIT(A) and submitted that the assessee provided all the requisite documents relating to the purchase of the machinery and its utilization. The Assessing Officer overlooked the evidences.

20. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee is in the business of manufacturing and export of handloom goods, floor coverings and made ups which are covered under the TUF scheme, though the Assessing Officer has not denied these facts. The assesse in fact, has demonstrated before us by giving details which was produced before the Assessing Officer as well, as to how each machinery is covered under which clause of TUF Scheme. Thus, the CIT(A) has rightly held that after comparing the bills, the description of the machines and the relevant entry in schedules to TUF Scheme, it is clear that item no. 1 to 30 and 36 are covered under TUF Scheme and the same are eligible for depreciation accordingly @ 50%, whereas, item no. 31 to 35 totaling for value of Rs. 97,000/- only are not covered under any clause of the schedules of TUF Scheme, therefore, the machinery worth Rs. 97,000/- are eligible for depreciation at the normal rate of 25% and accordingly directed the Assessing Officer. Therefore, there is no need to interfere with the findings of the CIT(A). Hence, Ground No. 1 of the Revenue's appeal is dismissed.

21. As regards to Ground No. 2 of the Revenue's appeal relating to addition of Rs. 5,51,19,865/- made by the Assessing Officer on account of difference in the value of stock as per stock statement submitted to the Bank and as declared in the trading results of the assessee, the Ld. DR submitted that the Assessing Officer has clearly observed that as per the manufacturing cum trading account for the period 01.03.2004 to 31.03.2004, the closing stock as

on 31.03.2004 would have been Rs. 6,40,91,216/- while the assessee has shown the closing stock of only Rs. 89,71,351/- in its balance sheet as on 31.03.2004. Therefore, the Assessing Officer rightly made addition of Rs. 4,41,19,865/- as deemed income under Section 69 of the Income Tax Act, 1961.

22. The Ld. AR relied upon the order of the CIT(A) and also that of the order of the CIT(A) for subsequent year. The Ld. AR further submitted that the assessee received purchased goods worth Rs. 4,66,94,618/- before 01.03.2004 which is clearly set out from the books of accounts. The Ld. AR further submitted that the Assessing Officer has not rejected the books of accounts.

23. We have heard both the parties and perused all the relevant material available on record. It is undisputed fact that the books of accounts of the assessee were never rejected by the assessee during the year. Further, from the perusal of the details filed by the assessee, it can been seen that the assessee received/ purchased goods worth Rs. 4,66,94,618/- before 01.03.2004. The said purchase is evident from the bills and vouchers. All these documents/evidences were before the Assessing Officer. Thus, the CIT(A) rightly deleted this addition with justifiable reasoning. Therefore, there is no need to interfere with the finding of the CIT(A). Hence, Ground No. 2 of the Revenue's appeal is dismissed.

24. As regards to Ground No. 3 of the Revenue's appeal relating to deduction under Section 80HHC to the assessee on the export incentive, being supporting manufacturer, the Ld. DR submitted that in case of supporting manufacturer after computing profits of the business as per clause (baa) of Explanation to Section 80HHC, the deduction is to be allowed to the extent of profits referred to in sub-section (1B) of Section 80HHC of the Income Tax Act read with sub-Section (1A) and sub-section (3A) of Section 80HHC of the Act. The profit and gains of business or profession are to be reduced by 90% of export incentives,

brokerage, commission etc. to arrive at profits of the business and then 30% of these profits are to be allowed as deduction u/s 80HHC of the Income Tax Act in the case of the supporting manufacturer, in A.Y. 2004-05.

25. The Ld. AR submitted that Ground Nos. 2 and 3 of the assessee's appeal is dealing with this issue only and the same may be remanded back to the file of the Assessing Officer in light of the decision in earlier year in assessee's own case given by the Tribunal.

26. We have heard both the parties and perused all the relevant material available on record. We have already dealt with this issue in above paras while deciding Ground Nos. 2 and 3 of assessee's appeal, hence, the issue is remanded back to the file of the Assessing Officer. Ground No. 3 of the revenue's appeal is partly allowed for statistical purposes.

27. As regards to Ground No. 4 of the Revenue's appeal relating to addition of Rs. 24,09,588 out of total addition of Rs. 25,48,292/- made by the Assessing Officer by disallowing foreign traveling expenses, the Ld. DR submitted that the assessee other than the partners of the firm or the supporting bills could not produced any other evidence to establish that these expenses have been wholly and exclusively for the business purposes.

28. The Ld. AR relied upon the order of the CIT(A).

29. We have heard both the parties and perused all the relevant material available on record. From the perusal of the order of the CIT(A) as well as the Assessment Order, it can be seen that the evidences/documents were produced by the Assessee during the assessment proceedings to establish the claim of the assessee that the foreign travel was exclusively for the business purpose only. Hence, there is no need to interfere the findings of the CIT(A). Therefore, Ground No. 4 of the Revenue's appeal is dismissed.

30. As regards to Ground No. 5 of the Revenue's appeal relating to addition of Rs. 17,56,508/- on account of building repair and maintenance expenses, the Ld. DR relied upon the assessment order.

31. The Ld. AR relied upon the order of the CIT(A).

32. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has not disputed the expenditure incurred on repair and maintenance but held the same as capital expenditure. The assessee's factory is on rented premises and there is no new structure created by the assessee. These facts were also not disputed by the Assessing Officer. Hence, there is no need to interfere with the finding of the CIT(A). Ground No. 5 of the Revenue's appeal is dismissed.

33. As regards to Ground No. 4/6 of the revenue's appeal relating to addition of Rs. 1,48,249/- disallowing export promotion expenses, the Ld. DR relied upon the Assessment Order.

34. The Ld. AR relied upon the order of the CIT(A).

35. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has allowed the export promotion expenses to the extent of 9/10th of the expenses claimed by the assessee. Thus, the Assessing Officer never disputed that there is export promotion expenses. In fact, there is no observation by the Assessing Officer that certain portion of these expenses were utilized for personal use. The disallowance is only on the basis of presumption and assumptions. Therefore, the CIT(A) rightly deleted this addition. There is no need to interfere with the findings of the CIT(A). Hence, Ground No. 4/6 is dismissed.

36. In result, the appeal of the assessee and appeal of the Revenue is partly

allowed for statistical purpose.

Order pronounced in the Open Court on this 30th Day of March, 2021.

Sd/-	**Sd/-**
(G. S. PANNU)	**(SUCHITRA KAMBLE)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 30/03/2021
R. Naheed *

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

ASSISTANT REGISTRAR
ITAT NEW DELHI