

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3539/Del/2011
(Assessment Year : 2003-04)

DCIT Circle – 23(2), New Delhi – 02 PAN No. AABCS 2899 H (APPELLANT)	Vs.	M/s. SIL Investment Ltd., (Formerly known as Sutlej Industries Ltd.) Panchpahar Road, Bhawani Mandi, Jhalawar, Rajasthan - 326502 (RESPONDENT)
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Assessee by	Shri Rohit Jain, Adv.
Revenue by	Shri Prakash Dubey, Sr. D.R.

Date of hearing:	13/07/2021
Date of Pronouncement:	16/07/2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 08.04.2011 of the Commissioner of Income Tax (Appeals)-XI, New Delhi relating to Assessment Year 2003-04.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company who filed its original return of income for A.Y. 2003-04 on 27.11.2003, declaring total income of Rs.1,14,29,476/- under the normal provisions of Income Tax Act but however, paid tax on deemed income of Rs.10,63,49,082/-. The case was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the Act vide order dated 29.03.2006 and the total income was determined at Rs.1,14,29,476/- under the normal provisions and income was computed under section 115JB of the Act at Rs.13,53,28,238/-. Thereafter, a notice u/s 148 of the Act was issued on 10.03.2010 and in response to which assessee vide letter dated 12.04.2010 submitted that the original return of income filed by the assessee on 27.11.2003 declaring total income at Rs.1,14,29,476/- be treated as return filed in compliance with notice issued u/s 148 of the Act. Thereafter, assessment was framed u/s 147 of the Act vide order dated 01.11.2010 and the total income was determined at Rs.5,11,63,951/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 08.04.2011 in Appeal No.171/10-11 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue preferred appeal before the Tribunal. The Co-ordinate Bench of Tribunal vide order dated 04.06.2018 in ITA No.3539/Del/2011, dismissed the appeal of Revenue. Thereafter, Revenue moved a Miscellaneous Application before the Tribunal praying for recalling of the order. The Co-ordinate Bench of Tribunal in MA No.676/Del/2018 vide order

dated 06.05.2019 recalled the order passed on 04.06.2018 wherein it had dismissed the appeal filed by the Revenue. Thus the Revenue is now before us with the following grounds of appeal:

- “1. *On the facts and circumstances of the case the Ld CIT(A) erred in law and merit of the case in deleting the disallowance of claim under section 80IA/80IB of Rs.4,32,65,725/- made by the AO.*”
- “2. *On the facts and circumstances of the case the Ld CIT(A) erred in law and merit of the case in deleting the disallowance of claim under section 80M of Rs.3,97,34,475/- made by the AO.*”
3. *The appellant craves to amend, modify, alter and or forgo any ground of appeal at any time before or during the hearing of this appeal.*

5. Assessee has also made a request under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 whereby it supports the order of CIT(A). Before us, at the outset, Learned AR submitted that if the appeal of Revenue is dismissed, then the grounds raised by the assessee would be rendered academic and would therefore not require any adjudication.

We first proceed with the appeal of Revenue.

6. **Ground No.1** is with respect to deleting the disallowance of claim u/s 80IA/80IB of the Act of Rs.4,32,65,725/-.

7. Assessee had 10 units spread over the state of Jammu & Kashmir, Rajasthan & Gujarat and 5 units were eligible for deduction u/s 80IA/IB of the Act. During the year under

consideration, profit u/s 80IA/IB of the Act was derived only from the unit VII at Kathua & unit IX at Bhawani Mandi and assessee, following the provision of Section 80IA(5) of the Act, claimed the deduction u/s 80IA/IB for those two units. AO in the reassessment proceedings was of the view that assessee should have adjusted the losses of other units with the profits of the two units. The submission of the assessee that losses of the other units were not actual losses and have already been adjusted in the earlier year and therefore do not call for adjustment in the year under consideration, was not found acceptable to AO. AO thereafter disallowed the claim of deduction u/s 80IA/IB of the Act to the extent of Rs.4,32,65,725/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who decided the issue in favour of the assessee by observing as under:

“4.2 Examined the rival submissions. The claim of the appellant regarding deduction u/s 80IA/IB is essentially a question of fact and not a question of law. In its submission and its paper book unit wise and year wise computation was given alongwith progressive and unabsorbed depreciation and losses. The record reveals that during the relevant period profit was derived from only two units and I agree with the submission of the appellant that computation was made as per the provision of Section 80IA(5) for these two units. The question is whether the profits of the two units are to be adjusted with the losses of other unit for the purpose of computation has been decided by the Ld AO in favour of the Revenue. But Sec.80IA(5) does not permits such type of computation as done/intended in her order dated 01/11/10 by the Ld AO. As the factual issue has been religiously followed by the appellant I have no hesitation to accept the view given by the appellant and the Revenue stands in making disallowance of Rs.4,32,65,725/- is rejected. The appellant has computed the deduction at Rs.8,68,25,938/- but it has restricted the amount of Rs.4,31,65,725/-. This is the proper approach as per the provision of the law and hence the stand of the appellant is sustained and that of the Revenue is rejected.”

8. Aggrieved by the order of CIT(A), Revenue is now before us.

9. Before us, Learned DR supported the order of AO.

10. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A).

11. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80IA/IB of the Act. CIT(A) while granting relief to the assessee has given a finding that during the relevant period, profits was derived from only 2 units and the computation of deduction u/s 80IA/IB has made as per the provisions of section 80IA(5) of the Act.

12. Before us, no fallacy in the findings of CIT(A) has been pointed out by the Revenue. In such a situation, we find no reason to interfere with the order of CIT(A), **thus the ground of Revenue is dismissed.**

13. **Ground No.2** is with respect to deleting the denial of claim u/s 80M of the Act of Rs.3,97,34,475/-.

14. AO in the reassessment proceedings had noted that assessee had claimed deduction of Rs.3,97,34,475/- u/s 80M of the Act. AO was of the view that since no distribution of dividend

was made by the assessee, it was not eligible for deduction u/s 80M of the Act. He therefore denied the claim of deduction u/s 80M of the Act.

15. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who decided the issue in favour of the assessee by observing as under:

“5.2 Examined the rival submissions. During the relevant period a total amount of Rs.5,09,19,998/- was received by way of dividend out of which Rs.3,97,34,475/- was distributed to its share holder. Further all these facts were brought to the notice of the Ld AO by the appellant during 147 proceeding, so much so a certificate was also filed alongwith the return for the relevant period. Here also the Ld AO has not discussed anything in her order but not allowed the claim u/s 80M. It was stated before me that the appellant thought it was a mistake on part of the Ld AO and on 154 petition dated 25/12/10 was filed on 05/01/11 but to no avail. The appellant stated before me that neither the facts were confronted to the appellant nor the matter was discussed in her order. I find full justification in such submission of the Ld AO of the appellant and hence disallowance u/s 80M is not sustainable.”

16. Aggrieved by the order of CIT(A), Revenue is now before us.

17. Before us, Learned DR supported the order of AO.

18. Learned AR on the other hand reiterated the submission made before the AO and CIT(A) and supported the order of CIT(A).

19. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80M of the Act. We

find that CIT(A) while deciding the issue in favour of the assessee has given a finding that out of the total amount of Rs.5.09 crore (rounded off) was received by the assessee by way of dividend and Rs.3.97 crore (rounded off) was distributed as dividend to its share holders by the assessee. To support the contention of the distribution of the dividend, assessee had also filed a certificate to the CA for the relevant period. Before us, no fallacy in the findings of CIT(A) has been pointed by the Revenue. Considering the totality of these facts and in the absence of any fallacy pointed by the Revenue in the order of CIT(A), we are of the view that no interference of the CIT(A) is called for and **thus the ground of the Revenue is dismissed.**

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

21. As far as the grounds raised by assessee under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 are concerned, we are of the view that the grounds raised by assessee have been rendered academic as we have dismissed the appeal of Revenue hereinabove. In such a situation, the grounds require no adjudication.

Order pronounced in the open court on 16.07.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 16.07.2021

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Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI