

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER**

ITA No.1295/Bang/2018
Assessment year: 2011-12

M/s. SLK Software Services Ltd., 8 th Floor, MFAR Manyata Embassy Business Park, Green Heart IV, Outer Ring Road, Bengaluru – 560 045. PAN: AAEC57548 E	Vs.	The Deputy Commissioner of Income Tax, Circle – 12(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. K. R. Vasudevan, Advocate
Revenue by	:	Shri. Kannan Narayanan, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	05.08.2021
Date of Pronouncement	:	09.08.2021

ORDER

Per N.V. Vasudevan, Vice President:

This is an appeal by the assessee against the Order dated 30.11.2017 of CIT(A), Bengaluru – 6, Bengaluru, relating to Assessment Year 2011-12.

2. There are 2 issues that arise for consideration in this appeal. The first issue is with regard to the eligibility of the claim of the assessee for deduction under section 80JJAA of the Income Tax Act, 1961 (Act).

3. The Revenue authorities rejected the claim of the assessee for deduction on the ground that :

- (a) Employees working in the software unit cannot be treated as workmen as envisaged under section 80JJAA of the Act.
- (b) Deduction claimed under section 80JJAA of the Act cannot be allowed in respect of additional wages paid to employees who were working in units, the profits of which were claimed as a deduction under section 10AA of the Act. The aforesaid reason was given by the AO in view of the provisions of section 80A(4) of the Act.

4. On appeal by the assessee, the CIT(A) confirmed the order of the AO and hence ground No.2 by the assessee before the Tribunal:

- 2. *Disallowance of deduction claimed under section 80JJAA of the Act*
 - 2.1 *The learned Commissioner of Income-tax (Appeals) ('CIT(A)') has erred in confirming the disallowance made by the Assessing Officer ('AO') with respect to the deduction under section 80JJAA of the Act as claimed by the appellant.*
 - 2.2 *The learned CIT(A) has erred in confirming the view of the learned AO that the appellant would not be eligible to claim deduction under section 80JJAA of the Act on account of the provisions of section 80A(4) of the Act.*
 - 2.3 *The learned CIT(A) has erred in confirming the view of the learned AO that the appellant has already claimed deduction under the provisions of section 10AA, therefore it would not be eligible to claim a deduction under section 80JJAA of the Act which is factually erroneous.*
 - 2.4 *The learned CIT(A) along with the learned AO, has erred in not appreciating the fact that the appellant has claimed deduction under section 80JJAA of the Act with respect to unit which is not eligible for tax holiday benefit.*
 - 2.5 *The learned CIT(A) along with the learned AO, has erred in not appreciating the fact that the appellant has claimed deduction*

under section 80JJAA of the Act with respect to the additional wages paid to new regular workmen employed in its Software Technology Parks in India (‘STPI’) unit only, which is not claiming tax holiday.

5. On ground No.2 raised by the assessee, identical issue came up for consideration before this Tribunal in assessee’s own case for Assessment Year 2012-13 in ITA No.2175/Bang/2018 and this Tribunal remanded the issue on deduction under section 80JJAA of the Act to the AO for fresh consideration, observing as follows:

“4. Before us, the learned AR submitted that the assessee is having two units, out of which it is claiming deduction u/s 10AA of the Act in respect of only one unit. He submitted that the deduction u/s 80JJAA of the Act was claimed in respect of other unit (non-10AA unit), which is not claiming deduction u/s 10AA of the Act. The learned AR submitted that the Tax Authorities have misunderstood this factual aspect and hence the second reason mentioned by the A.O. above will not survive. The learned AR further submitted that the assessee has furnished details of employees against whom deduction u/s 80JJAA of the Act was claimed by way of additional evidences in order to show that the deduction was claimed in respect of non-10AA unit.

5. With regard to the view taken by the Assessing Officer that the employees working in software unit cannot be treated as workmen as envisaged under the Act, the learned AR placed reliance on the decision rendered by the co-ordinate Bench in the case of Manhattan Associates (India) Development Centre (P.) Ltd. v. DCIT [(2019) 112 taxmann.com 200 (Bangalore-Trib.)], wherein the Tribunal has taken the view that the software professional could be considered as workmen as per the provisions of section 80JJAA of the Act. The learned AR further submitted that the provisions of section 80JJAA of the Act has been amended by substituting the words “industrial undertaking” by the word “factory” subsequent to assessment year 2012-2013. The learned AR submitted that the co-ordinate Bench in the case of Manhattan Associates (India) Development Centre (P.) Ltd.

(supra), has examined the eligibility of salary paid to Software Engineers for deduction u/s 80JJAA of the Act for the assessment year 2012-2013 and has held that the salary so paid is eligible for deduction u/s 80JJAA of the Act. In view of the decision rendered by the co-ordinate Bench in the above said case, the Ld A.R submitted that first reason given by the Assessing Officer would fail.

6. We heard the learned Departmental Representative on this issue. As per the decision rendered by the co-ordinate bench in the case of Manhattan Associates (India) Development Centre (P.) Ltd (supra), salary paid to software engineers are eligible for deduction u/s 80JJAA of the Act. Hence the first reasoning given by the AO shall fail. With regard to the second reasoning, as per the submission made by the learned AR, there appears to be some confusion with regard to facts relating to the deduction u/s 80JJAA of the Act claimed by the assessee. The assessee has also furnished certain additional evidences to substantiate its claim. Under the set of facts, we are of the view that this issue requires fresh examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh.”

6. Since the facts and circumstances in the present Assessment Year are identical to Assessment Year 2012-13, respectfully following the decision of the Tribunal, we set aside the issue to the AO for examining afresh with the same direction as was given in Assessment Year 2012-13.

7. The next issue that arises for consideration in this appeal is with regard to correctness of the disallowance of expenses incurred for earning exempt income by invoking the provisions of section 14A of the Act. The disallowance under section 14A of the Act was worked out by the AO as follows:

In view of the above, I am constrained to invoke provisions of section 14A r.w.r. to determine the disallowance u/s 14A. A detailed working in respect of disallowance of expenditure as envisaged under Rule 8D is given as under :-

<i>i</i>	<i>Amount of expenditure directly relating to income which does not form part of total income</i>	<i>NIL</i>
<i>ii</i>	<i>Interest expenses not directly attributable to any particular income or receipt, then $A \times B/C$ *</i>	<i>22863</i>
<i>iii</i>	<i>0.5% of average value of investments, income from which does not or shall not form part of the total income (0.5% of 4208904)</i>	<i>21044</i>
	<i>Aggregate of above</i>	<i>43907</i>

**where*

*A = amount of expenditure by way of interest other than the amount of interest included in Clause(i) incurred during the previous year
: Nil*

*B = average value of investment, income from which does not or shall Not form part of total income, as appearing in the balance sheet of the assessee on the first and last day of the previous year
(1018898 + 7398911) / 2 : 4208904*

*C = average value of total assets as appearing in the balance sheet of the Assessee, on the first and last day of the previous year
(532332331 + 368932806) / 2 :450632568*

Hence as worked out above, the disallowance u/s.14A is the aggregate of (i) (ii) (iii) above, and it is arrived at Rs.43907/-. As the assessee has already disallowed an mint of Rs.33948/- in its computation on account of disallowance u/s.14A, the balance to be disallowed is Rs.9959/. (Addn: Rs 9959)”

8. The CIT(A) confirmed the action of the AO. The limited prayer of the learned Counsel for the assessee before us is that while working out the disallowance of interest expenses by invoking the provisions of Rule 8D(2)(ii) of the Act (disallowance of interest expenses), the AO should not have included interest expenditure on loans amounting to Rs.14,71,628/- which was a vehicle loan which cannot be considered as interest expenses incurred to make investments that would yield tax free income.

9. We have considered the submissions of the learned Counsel for the assessee and are of the view that this issue was specifically raised by the assessee before the CIT(A). The submissions made before the CIT(A) is as follows:

“2.3.5 Applicability of Clause (ii) of Sub-rule 2 of Rule 8D

- *The Company submits that the intention of the Legislature is to consider interest expenditure incurred for general purposes for computing the disallowance under Rule 8D. Thus, the Company submits that only interest expenditure incurred wherein the end use of the funds is not directly ascertainable, should be considered for disallowance under clause (2)(ii) of Rule 8D.*
- *During the AY 2011-12, the Company has incurred interest on loans amounting to Rs. 24,47,897 which includes interest on vehicle loan amounting to Rs. 14,71,628. Therefore, only the balance amount pertains to interest expenditure not directly attributable to any specific assets, i.e. Rs. 976,269.*
- *The Appellant submits that the Learned AO has considered the entire interest on loans amounting to Rs. 24,47,897 including interest on vehicle loan for the computation of disallowance under Rule 8D(2)(ii). We submit that the interest on vehicle loan should not be considered for disallowance under Rule 8D(2)(ii) since the loan on purchase of vehicles are specifically used for the purchase of vehicles.*

We further submit that the loan amount is directly disbursed to the vendors of the vehicle and no part of the loan amount is disbursed to the Company. Thereby, it is very evident that such vehicle loans are not used for the purpose of making tax free investments.

- *Accordingly, the Appellant submits that the disallowance under section 14A has been correctly calculated by the Company and no further adjustment is required in this regard.”*

10. However, in the impugned order, the CIT(A) has not dealt with the same. We are of the view that the claim made by the assessee, if verified and found to be true by the AO, then the claim made by the assessee should be accepted. We accordingly direct the AO to examine the claim of the assessee and if found correct, to exclude the interest expenses on vehicle loan while working out disallowance in terms of Rule 8D(2)(ii) of the Rules. The ground of appeal of ground No.3 is accordingly decided.

11. The assessee has also raised a ground of appeal challenging the levy of interest under section 234C of the Act on the ground that the levy was not proper as it had been calculated on the assessed income whereas as per the provisions of the Act, it should be calculated on the return of income. In this regard, learned Counsel for the assessee placed reliance on the decision of the Bengaluru Bench of this Tribunal in the case of Ocwel Financial Solutions Pvt. Ltd., in ITA No.153/Bang/2017 order dated 12.07.2021 wherein the Tribunal held as follows:

“27. The next issue relates to charging of interest u/s 234C of the Act. The Ld A.R submitted that the interest u/s 234C is chargeable on the returned income. He submitted that the AO has charged said interest on assessed income. We find merit in the submission of Ld A.R, since it

is in accordance with the provisions of sec. 234C of the Act. Accordingly, we direct the AO to charge interest u/s 234C of the Act on the returned income.”

12. Following the aforesaid decision, we direct the AO to levy interest under section 234C of the Act on the return of income and not on the assessed income.

13. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B. R. BASKARAN)
Accountant Member

Bangalore,

Dated: 09.08.2021.

/NS/*

Sd/-

(N. V. VASUDEVAN)
Vice President

Copy to:

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|-------------------------|---------------|---------------|-----------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | | 6. Guard file | |

By order

Assistant Registrar
ITAT, Bangalore.