

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

(THROUGH VIDEO CONFERENCE)

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3764/Del./2017
ASSESSMENT YEAR : 11-12**

Addl. CIT
Special Range-8,
Room No. 199A, 1st floor
New Delhi
C.R.Building
New Delhi
(PAN :AAACS6857L)

Vs.

Sara Sae Pvt. Ltd.
(Earlier known as Nov
Sara India Pvt. Ltd.)
GL-3, Ashoka Estate,
24, Barakhamba Road
New Delhi

(APPELLANT)

(RESPONDENT)

**REVENUE BY : Shri Prakash Dubey, Sr. DR
ASSESSEE BY : None**

**Date of Hearing : 08.07.2021
Date of Order : 22 . 09.2021**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant Addl. CIT, Special Range-8, New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal sought to set aside the impugned order dated 11.04.2017 passed by the Commissioner of Income-tax (Appeals)-17, New Delhi, qua the assessment year 2011-12 on the grounds inter alia that :-

“1. On the facts and circumstances of the case and also in law, the Ld. CIT(A) erred in allowing the allocation of common expenses on the basis of net profit ratio of the Units as against the ratio of turnover applied by the AO while calculating the deduction u/s 80-IC of the I.T.Act.

2. On the facts and circumstances of the case and also in law, the Ld. CIT(A) erred in deleting the addition of Rs. 5,44,32/- by the AO u/s 14A of the I.T.Act, 1961 read with Rule 8D of the I.T.Rules, 1961 in spite of the fact the decision on this issue is pending in Hon’ble Supreme Court in the case of Maxopp Investment Ltd. and in view of the facts that the financial expenses and administrative expenses debited in the P & L a/c are also relatable to the investments in shares purchased.

3. The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is into the business of Manufacturing of Machinery and Equipment used in Oil well Drilling and Production activities. Assessee has claimed deduction of Rs. 9,61,13,260/- u/s 80IC. AO noticed that assessee has allocated administrative expenses of its office amounting to Rs. 8,22,04,273/- on the basis of net profit of units 1, 2 & 3 . Declining the contention raised by the assessee, AO allocated the common administrative expenses of its office on the basis of gross turnover and thereby made disallowance of Rs. 2,35,74,050/- out of claim of the assessee u/s 80IC of the Income Tax Act.

3. AO also made disallowance Rs. 54,432/- u/s 14A read with Rule 8D by following decision rendered by special bench of the

Tribunal in case of *M/s. Cheminvest Ltd. vs. ITO (2009) 121 ITD 318 (Delhi)(SB)*.

4. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has deleted the addition by partly allowing the appeal. Feeling aggrieved, revenue has come up before the Tribunal by way of filing the present appeal.

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO. 1 :

7. Ld. CIT(A) reversing the findings returned by AO directed to allocate common administrative office expenses for the purpose of claim made u/s 80IC on the basis of net profit by accepting the contention of the assessee that the profit ratio is distorted if allocation of common expenses is done on the basis of turnover.

8. We have perused the assessment order passed by Ld. CIT(A). Ld. CIT(A) relied upon the order passed by Tribunal in case of **Corning SAS-India vs. Dy. Director of Income Tax**. Ld. CIT(A) has not given any citation of the case relied upon and has also returned cryptic findings.

9. Assessing Officer allocated the common administrative expenses on the basis of turnover of unit 1, 2 & 3 as under :-

| <i>Particular</i> | <i>Unit-1</i> | <i>Unit-2</i> | <i>Unit-3</i> | <i>Total</i> |
|--|---|---------------------|--------------------|-----------------------|
| <i>Gross turnover (In crore)</i> | <i>73,32,73,281</i> | <i>47,62,89,420</i> | <i>7,13,13,780</i> | <i>1,28,08,76,481</i> |
| <i>Proportionate expenses allocated</i> | <i>4,70,60,117</i> | <i>3,05,67,370</i> | <i>45,76,686</i> | <i>8,22,04,173</i> |
| <i>Taxable Income from business and profession</i> | <i>20,59,09,188</i> | <i>28,22,096</i> | <i>96,70,929</i> | <i>21,84,02,213</i> |
| <i>Deduction u/s 80IC</i> | <i>6,17,72,756</i> <i>30% being</i> <i>VIIth year</i> | <i>28,22,096</i> | <i>9670929</i> | <i>7,42,65,781</i> |

10. Ld. DR for the revenue to support his argument that allocation of common expenses is to be done on the basis of turnover to unit 1, 2 & 3 yield the correct results and relied upon the order passed by co-ordinate bench of Tribunal in case **Kewal Kiran Clothing P. Ltd. Vs. Department of Income Tax**.

11. We have perused the order passed of co-ordinate bench of Tribunal, which is on identical facts, and operative part thereof is as

under:

“14. We have considered submissions of ld representatives of parties and orders of authorities below. We have also considered cases cited before us.

15. We observe that AO has specifically pointed out the heads of expenses for which the total expenditure has been incurred by the assessee. The AO has stated the amount of expenditure, which has been allocated by the assessee to its Daman Unit, and assessee has not given any basis for allocating such expenses, details given hereinabove, to Daman Unit. Therefore, The AO has adopted the expenditure for each of the unit on the basis of turnover and after deducting the actual expenditure allocated by the assessee; he arrived at aggregate amount of Rs.73,45,083, details given hereinabove, and has stated that assessee has under allocated the expenditure to inflate profits and gains of eligible unit. During the course of hearing, ld A.R. could not give details on the basis of which it has allocated the expenditure under the heads, as mentioned hereinabove, to its Daman Unit. There is no dispute to the fact that while computing profits and gains of an eligible business, all the direct as well as indirect expenses have to be considered for computation of profits and gains of eligible unit to claim deduction as per section 80IA of the Act. If excessive expenditure is considered in respect of unit which is not eligible for deduction u/s. 80IA of the Act, it will be unfair as profit and gains of a unit which is not eligible for deduction will be understated and on the other hand the profits and gains of eligible unit/ business will be inflated to get more deduction u/s.80IA of the Act. ITAT, Mumbai Bench in the case of Nitco Tiles Ltd (supra) considered similar issue and vide its head note, in regard to allocation of expenses to the eligible unit and the unit which is not eligible for deduction u/s. 80IB/80IA of the Act observed as under:

"Further, for determination of the allowable revenue expenses for the purposes of computing the profits and gains of the eligible business of the instant assessee, all the provisions relating to the head of income "Profits and gains from business or profession" would apply without any mutation. In other words, all the direct as well as indirect expenses had to be adjusted from the profit and gains of the eligible business. Further, on finding that the sub-section(5) refers ITA N0.7141/MUM/2008 Assessment Year: 2005 -06 to phrases i.e. "the profits and gains of an eligible

business to which provisions of SUB-SECTION(1) apply.. shall be computed as if such eligible business was the only source of income of the assessee", one should interpret and understand them by the meaning that the standalone unit has to be given to such eligible business. In other words, "as if such eligible business was the only source of income" shall mean that the alleged indirect expenditure or common or head office expenses were incurred for such eligible business, the only source of income of the assessee. Consequently, all the indirect expenses or common expenses have to be considered for the said computation. Thus, the provisions of section 801B(1) convincingly advocate for the allocation of indirect expenses towards the Silvasa Unit as well."

15.1 In the case before us, there is no dispute to the fact that the total turnover of the eligible unit i.e. Daman Unit is 73.43%. Considering the decision of coordinate bench of ITAT in the case of Nitco Tiles Ltd (supra), we are of the considered view that it is fair and reasonable to allocate the expenses between the units on the basis of turnover in the absence of any contrary facts brought on record before us. Hence, we hold that AO has rightly allocated the expenses between the units on the basis of turnover. Hence, we uphold the action of AO by reversing order of Id CIT(A). Hence, Ground No.3 of department is allowed."

12. So, following the order passed by co-ordinate bench of Tribunal, we are of the considered view that allocation of expenses between the units 1, 2 & 3 for the purpose of determination of the allowable revenue expenses in order to compute the profits and gains of the eligible business units of the assessee. We are of the further view that Ld. CIT(A) has erred in allocating the common expense of unit 1, 2 & 3 of the assessee for determination of allowable deductions u/s 80IC on the basis of net profit, hence we reverse the findings returned by Ld. CIT(A) and uphold the findings

returned by AO that for determination of the deductions u/s 80IC allocation of common expenses is to be done on the basis of turnover as has been done in preceding para 9 & hence ground no.1 is decided in favour of the revenue.

GROUND NO. 2 :

13. Assessing officer noticed that the assessee has made investment in equities to the tune of Rs. 29,86,720/- and by invoking the provisions contained u/s 14A read with Rule 8D made disallowance of Rs. 54,432/- on the ground that expenses relatable to the earning of exempt income by the assessee are required to be disallowed.

14. Perusal of the assessment order passed by the AO shows that complete facts have not brought on record as to how much was the exempt income earned by the assessee during the year under assessment; as to whether any interest bearing funds have been used for the purpose of investment so as to apply the provisions contained u/s 14A read with Rule 8D. Even reply filed by the assessee has not been brought on record.

15. At the same time, Ld. CIT(A) has also returned cryptic findings that :

“Since, on ground nos. 2, 3 and 4, on identical facts, the CIT(A)-6, Delhi has decided the appeal in the appellant’s own case for the assessment

year 2010-11, the relevant para of his decision has been mentioned (supra), therefore, his decision is followed on identical set of facts. Hence, the appeal on these grounds is decided accordingly.”

16. In view of the matter, we are of the considered view that when complete facts are not on record this issue can not be examined in entirety and as such is remitted back to the Ld. CIT(A) to decide afresh by providing an opportunity of being heard to the assessee. Consequently ground no. 2 is allowed in favour of the revenue for statistical purposes.

17. Consequently, appeal filed by the revenue is partly allowed.

Order pronounced in open court on this 22nd day of September, 2021.

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

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 22nd day of September, 2021
Binita

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**