

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos.3025 & 3026/Del./2016  
Assessment Years 2010-11 & 2011-12

Shri Rohit Narang, W-5/3, DLF City, Phase-3, Gurgaon. PAN AACPN5305K	vs.,	The DCIT, Circle-2, Gurgaon. Haryana PIN 122 002
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri T.Kipgen, CIT-DR

Date of Hearing :	15.12.2021
Date of Pronouncement :	16.12.2021

**ORDER**

**PER R.K. PANDA, A.M.**

The above two appeals filed by the Assessee are directed against the separate orders dated 22.03.2016 and dated 23.03.2016 of the Ld. CIT(A)-2, Gurgaon, relating to A.Y. 2010-11 and 2011-12 respectively. Since common issues are involved in both these appeals, therefore, these were heard together and are being disposed of by this common order.

ITA.No.3025/Del./2016 – A.Y. 2010-11 :

2. This appeal was fixed for hearing on a number of times and adjourned 05 times at the written request of the Learned Counsel for the Assessee. Thereafter, no one was appearing for the assessee since last 05 occasions. It was seen from the order sheet entries that notices were sent by the Registry through RPAD and were returned unserved by the Postal Authorities with the remarks “Left”. The assessee has also not taken any steps to intimate the change of address, if any. Under these circumstances, we deem it fit and proper to decide the issue on the basis of material available on record and after hearing the Ld. D.R.

3. Facts of the case, in brief, are that the assessee is engaged in the business of Manufacturing and Selling Paper Packaging, having 02 units at Manesar and Delhi. The assessee claimed it as 100% export oriented unit by claiming deduction under section 10B of the I.T. Act, 1961. The assessee filed its return of income declaring income of Rs.50,47,026/- on 14.10.2010. A survey under section

133A of the I.T. Act, 1961 was conducted at the business premises of the assessee at Manesar and Delhi on 13.12.2011. Based on the documents impounded from the business premises of the assessee as well as the statement recorded during the course of survey, the A.O. held that the Komori Printing Machinery which had been purchased during the year by the assessee was being used for the business of the assessee at both Manesar and Delhi units. The Manesar unit of the assessee's business was 100% EOU on which the assessee had claimed deduction under section 10B of the I.T. Act, 1961. The A.O. noted that the assessee had claimed the depreciation on Komori Printing Machine in Delhi unit only. The A.O. was of the view that this claim of the assessee was a deliberate attempt to shift the claim of depreciation to a non-eligible unit so as to lower the profits in the non-eligible unit and showing higher profit in the eligible unit which was thereby eligible for deduction under section 10B of the I.T. Act, 1961 on a higher amount. The A.O. accordingly held that the depreciation on Komori unit was to be allocated between the Manesar unit and Delhi

unit in the ratio of the total sales pertaining to each of the units during the year.

3.1. During the course of assessment proceeding for the A.Y. 2009-10, an amount of Rs.38,35,712/- was disallowed by the A.O. under section 40(a)(ia) of the I.T. Act, 1961. The income of the assessee was accordingly increased for the A.Y. 2009-10. However, 10B deduction was not proportionately increased by the A.O. The A.O. accordingly determined the total income of the assessee at Rs.68,16,090/-. Similarly, the A.O. determined the income of the assessee at Rs.58,44,820/- for the A.Y. 2011-12.

4. In appeal, the Ld. CIT(A) upheld the action of the A.O.

5. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :

*“1. That the assessment order is bad in law on the facts of the case.*

2. *That the Ld. CIT(A) has grossly erred in upholding the allocation of depreciation of Rs.75,04,165/- of the independent non-eligible Delhi Unit to the 10B eligible Unit Manesar and thus reducing the allowable deduction u/s 10B to NIL as against the claim of Rs.40,62,099/-, without any powers under the Act for such allocation of depreciation and based on whim, fancies and irrelevant factors, not related to the year under consideration. That such allocation needs to be deleted and the claim of the assessee needs to be allowed.*
  
3. *That the Ld. CIT(A) was unjustified in upholding the assessment order of not enhancing the deduction u/s 10B on the amount of Rs.23,74,681/- by which amount the assessable income was reduced u/s 40(a)(ia) on depositing of TDS in the current year, pertaining to the disallowance made of Rs.41,46,105/- in AY 2009-10 and the claim u/s 10B on such disallowance was not allowed. The AO and the Ld. CIT(A) ought*

*to have maintained consistency in the approach adopted for the calculation of deduction u/s 10B.*

*The assessee prays accordingly.*

4. *That the assessee craves indulgence to amend, alter, add or modify any or all the grounds of appeal and/or take additional grounds of appeal.”*

6. We have read the Ld. D.R. and perused the orders of the A.O. and the Ld. CIT(A). We find the A.O. in the instant case re-computed the deduction under section 10B of the I.T. Act, 1961 by allocating the depreciation of non-eligible unit to the eligible unit. Further, the A.O. re-computed the deduction under section 10B of the I.T. Act, 1961 by not enhancing the deduction on account of the reduction in taxable income due to the deduction claimed under section 40(a)(ia) of the I.T. Act, 1961 of Rs.38,35,712/- which was disallowed in A.Y. 2009-10 for non-payment of TDS for which 10B deduction was not increased. We find the Ld. CIT(A) rejected both the claims of the assessee.

6.1. So far as the re-computation of deduction under section 10B of the I.T. Act, 1961 on account of re-computation of depreciation is concerned, the Ld. CIT(A) observed as under:

*“5.3. I have carefully considered the appellant’s submissions. Similar allocation of depreciation was made in the appellant’s own case for AY 2009-10. The appellant filed an appeal before the CIT(A). The CIT(A) vide his order dated 03.03.2015 in Appeal no. 338/11-12 held that the allocation was justified and dismissed the appeal of the appellant on this issue. The facts in the appellant’s case are identical to the facts in AY 2009-10. Following the decision of the CIT(A) in the appellant’s own case for AY 2009-10 the allocation of depreciation made by the AO between Delhi unit and Manesar unit is confirmed. This ground of appeal is dismissed”.*

6.2. Similarly, so far as denial of deduction under section 10B of the I.T. Act, 1961 for the year under consideration on account of the increased profit due to

computation of income under section 40(a)(ia) is concerned, the Ld. CIT(A) observed as under :

*“9.3. I have carefully considered the appellant’s submissions. It is an admitted fact on record that the computation of deduction u/s 10B for the year under consideration has been done by the AO based on the figures of profit shown by the appellant. This computation of deduction u/s 10B is as per the provisions of the law and requires no interference. The issue of not allowing the deduction u/s 10B on the increased income in view of disallowance of Rs.38,35,712/- u/s 40(a)(ia) pertains to AY 2009-10 and no corrective action, if any, requires to be taken on this account for the AY 2010-11. The additional ground filed by the appellant is accordingly dismissed”.*

6.3. We find no infirmity in the order of the Ld. CIT(A) on both these issues. We find the Ld. CIT(A) while deciding the issues has thoroughly discussed the same and has given

justifiable reasons. In absence of any contrary material brought to our notice, we do not find any infirmity in the order of the Ld. CIT(A) on both these issues. We, therefore, uphold the same and the grounds raised by the assessee are dismissed.

7. In the result, ITA.No.3025/Del./2016 of the assessee is dismissed.

ITA.No.3026/Del./2016 – A.Y. 2011-12 :

8. The grounds raised by the assessee are as under:

- “1. That the assessment order is bad in law on the facts of the case.*
- 2. That the Ld. CIT(A) has grossly erred in upholding the allocation of depreciation of Rs.57,58,396/- of the independent non-eligible Delhi Unit to the 10B eligible Unit Manesar and thus reducing the allowable deduction u/s 10B to NIL as against the claim of Rs.57,58,396/-, without any powers under the Act for such allocation of depreciation and*

*based on whim, fancies and irrelevant factors, not related to the year under consideration. That such allocation needs to be deleted and the claim of the assessee needs to be allowed.*

3. *That the assessee craves indulgence to amend, alter, add or modify any or all the grounds of appeal and/or take additional grounds of appeal.”*

9. After hearing both the sides, we find the above ground of appeal number.1 raised by the assessee is identical to the ground of appeal number.2 raised by the assessee in ITA.No.3025/Del./2016 for the A.Y. 2010-11. We have already decided the same and the ground raised by the assessee has been dismissed. Following similar reasonings, the ground raised by the assessee is dismissed.

10. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 16.12.2021.

Sd/-  
[KUL BHARAT]  
JUDICIAL MEMBER

Sd/-  
[R.K.PANDA]  
ACCOUNTANT MEMBER

Delhi; Dated 16<sup>th</sup> December, 2021.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.