IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH MUMBAI

BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.6770/Mum/2017
(**Assessment Year :2010-11**)

M/s. Hitech Corporation Limited (Formerly known as Hitech Plast Ltd.,) Unit No.201, 2nd Floor Welspun House Kamala City Senapati Bapat Marg Lower Parel (W) Mumbai – 400 013	Vs.	Deputy Commissioner of Income Tax 10 (3) Aayakar Bhavan M.K.Road Mumbai – 400 020
PAN/GIR No. AAACH5161N		
(Appellant)	..	**(Respondent**)

ITA No.7342/Mum/2017
(**Assessment Year :2010-11**)

Deputy Commissioner of Income Tax 15(2)(1) Room No.357,3rd Floor, Aayakar Bhavan M.K.Road Mumbai – 400 020	Vs.	M/s. Hitech Corporation Limited (Formerly known as Hitech Plast Ltd.,) C/130, Solaris, Opp. L & T Gate No.6, Powai Saki Vihar Road Mumbai – 400 072
PAN/GIR No. AAACH5161N		
(Appellant)	..	**(Respondent**)

Assessee by	Shri H.N. Motiwala & Shri Dalpat Shah
Revenue by	Ms. Neha Thakur
Date of Hearing	**10/02/2022**
Date of Pronouncement	**10/05/2022**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

These cross appeals in ITA Nos.6770/Mum/2017 & 7342/Mum/2017 for A.Y.2010-11 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-22/Addl.CIT 10(3)/IT-264/12-3 dated 28/09/2017 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 06/12/2012 by the ld. Addl. Commissioner of Income Tax-10(3), Mumbai (hereinafter referred to as ld. AO).

1.1. As these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.

1.2. Let us take up the assessee appeal first.

2. The ground No.1 raised by the assessee is challenging the confirmation of disallowance of rent paid to Coating Specialities (India) Ltd., of Rs.23,15,000/- u/s. 40A(2)(a) of the Act.

2.1. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of manufacturing of plastic containers, bottles, caps, jars and cans for packaging needs. Majority of the customers of the assessee are in painting industry. The assessee paid rent of Rs.23,15,000/- to Coating Specialities (India) Ltd., The ld. AO observed that the said concern is a sister concern of the assessee and accordingly, the payment of rent made by the assessee was sought to be examined from the purview of Section

40A(2) of the Act. The ld. AO observed that assessee had paid rent for the first time during the year under consideration to Coating Specialities (India) Ltd., The copy of rent agreements were furnished by the assessee before the ld. AO which are enclosed in pages 2-16 of the paper book. The details of the same are as under:-

Unit No.	Area in Sq.Ft	Rent per month	Period for which rent is paid	Rent Amount in AY 2010-11
Unit No.30(C Wing)	445	22000	12 months	Rs. 2,64,000/-
Unit No.130-135 (C Wing)	3110	155500	12 months	Rs.18,66,000/-
Unit No.311-312 (C Wing)	1910	37000	5 months	Rs.1,85,000/-
Total				**Rs.23,15,000/-**

2.2. The assessee submitted before the ld. AO that some amount of rent of Rs.2,64,000/- was paid in immediately preceding assessment year also for Unit No.30 (C Wing). The assessee also submitted that Coating Specialties (India) Ltd., is not sister concern of the assessee and hence, the provisions of Section 40A(2) of the Act would not come into operation at all. The assessee further submitted that Unit Nos. 130-135 and 311-312 were taken on rent only during the year and hence, rent was paid only for the year under consideration. The assessee also submitted that increase in turn over led to increase in staff strength which consequently warranted higher usage space of the premises which triggered the assessee to go for higher rental space during the year under consideration. The ld. AO did not heed to the contentions of the assessee

and proceeded to disallow the rent payment of Rs.23,15,000/- by invoking the provisions of Section 40A(2)(a) of the Act on the ground that it is excessive. While doing so, the ld. AO did not bring in any comparable instances for invoking the provisions of Section 40A(2) of the Act. The ld. AO did not bring on record the comparable cases of fair market value of rent paid in similar circumstances by similarly placed assessees.

2.3. From the aforesaid narration of facts, it could be safely concluded that the contentions of the ld. AO that assessee had not paid any rent to Coating Specialities (India) Ltd., in earlier years is not appreciated. The reasons for assessee not paying the rent in earlier years are duly explained hereinabove. We find that assessee had even pleaded before the ld. CIT(A) that it had paid rent at Rs.39.23 per sq.ft per month to Coating Specialities (India) Ltd., and the comparable instance for similarly placed property was Rs.41.57 sq.ft per month which was charged by Mrs. Vandana G. Pahilwani and Mr. Ghanshyam L Pahilwani. The ld. CIT(A) had not addressed this fact at all. We find that even assuming that Coating Specialities (India) Ltd., is a related party of the assessee, still the rent paid by the assessee @Rs.39.23 per sq.ft per month is lesser than rent paid to an unrelated party i.e. Mrs.Vandana G. Pahilwani and Mr. Ghanshyam L. Pahilwani. On this count itself, the rent paid by the assessee cannot be treated as excessive to invoke the provisions of Section 40A(2) of the Act. As stated supra, in any case, the ld. AO had not brought any evidence on record by way of comparable instances of fair market value of rent to drive home the point that rent paid by the assessee is excessive or unreasonable. Hence, we have no hesitation in directing the ld. AO to delete the disallowance made u/s.40A(2)(a) of the Act in the sum of Rs.23,15,000/- towards rent. Accordingly, the ground No.1 raised by the assessee is allowed.

3. The ground No.2 raised by the assessee is challenging the disallowance of management fees of Rs.63,00,000/- u/s.40A(2)(a) of the Act.

3.1. We have heard rival submissions and perused the materials available on record. The assessee paid Rs.93,00,000/- towards management fees to Coating Specialities (India) Ltd., The assessee placed on record the agreement entered for marketing consultancy with Coating Specialities (India) Ltd., wherein consideration was fixed to be payable by the assessee as management fees. The assessee also submitted that Coating Specialities (India) Ltd., had provided services for increase in sales to parties other than Asian Paints Ltd., and that the services provided by them to the assessee are in the nature of providing marketing strategies for plastic containers manufactured from its factories located at Pune, Masat, Pondicherry and Sriperumbudur. The assessee furnished the comparative chart of sales made to Asian Paints Ltd., and sales made to other parties for immediately preceding year and immediately succeeding year as under:-

(Rs. In Lacs)

Particulars/ Asst. Year	**2009-10**	**2010-11**	**2011-12**
Sales to Asian Paints	9,357.81	10,727.18	13,943.30
Sales to Other Parties	4,080.05	5,152.51	6,449.19
Total Sales	**13,437.87**	**15,879.69**	**20,392.49**
% Increase in Total	26.42%	18.17%	28.42%

Sales			
% Increase in Non Asian Sales	14.57%	26.29%	25.17%

Management Fees	43	93	93
Management Fees as % of Non Asian Sales	1.05%	1.80%	1.44%

3.2. The ld. AO observed that the management fees paid has increased from Rs.24,00,000/- to Rs.93,00,000/- and hence, there was no justification for such gigantic increase. The ld. AO accordingly, held that the management fees should be freezed at Rs.27,00,000/- which in his opinion was reasonable considering the increase in sales made to non-Asian parties. But having stated so, he proceeded to disallow the entire management fees of Rs.93,00,000/- u/s.40A(2)(a) of the Act.

3.3. It is pertinent to note that similar payment of management fees was allowed by the ld. AO u/s.143(3) of the Act in earlier as well as in subsequent years. It is not in dispute that the agreement for marketing consultancy dated 18/06/2009 entered into by the assessee with Coating Specialities (India) Ltd., were duly filed before the ld. AO. It is not in dispute that the said agreement clearly provides the scope of services to be provided by Coating Specialities (India) Ltd., to the assessee beyond doubt and the consideration payable thereon by the assessee. Subsequently, M/s. Coating Specialities (India) Ltd., vide letter dated 27/10/2009 had even reduced the consultancy fee payable from Rs.8,50,362/- per month to Rs.7,75,000/- per month for the period 01/04/2009 to 31/03/2010. A Confirmation letter to this effect is enclosed in page 30 of the paper book. The assessee had even bothered to furnish

the reconciliation statement of management fees as per TDS Certificate, books of accounts stating the month wise details thereon, which is enclosed in page 31 of the paper book. The aforesaid payment of management fees had been duly subjected to deduction of tax at source by the assessee. The ld. CIT(A) considering the fact that the sales to non-Asian Paints customers had increased only by 25%, held that the management fees also would be eligible for increase only to the extent of 25% and since Rs.24,00,000/- was paid in earlier year, the payment of management fees during the year would be reasonable if the same is fixed at Rs.30,00,000/- (Rs.24,00,000 x 25% of Rs.24,00,000). Against this finding of the ld. CIT(A), there is no appeal by the Revenue preferred before us and only assessee is in appeal for deletion of disallowance of remaining Rs.63,00,000/- (Rs.93,00,000/- - Rs.30,00,000/-). As stated earlier in ground No.1, even for this disallowance, the ld. AO had not brought any evidence on record any comparable instances to drive home the point that the payment of management fees paid by the assessee to Coating Specialities (India) Ltd., is excessive or unreasonable to invoke the provisions of Section 40A(2) of the Act. Hence, in our considered opinion, the provisions of Section 40A(2) of the Act could not be brought into operation at all in the instant case without bringing in any comparable instances of fair market value of management fees. Hence, we have no hesitation in deleting the disallowance of management fees of Rs.63,00,000/- made herein. Accordingly, the ground No.2 raised by the assessee is allowed.

4. The ground No.3 raised by the assessee is challenging the disallowance of commission paid to MIPAC Polymers Ltd., of Rs.7,17,681/- u/s.40A(2)(a) of the Act.

4.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had paid commission on sales to MIPAC Polymers Ltd., at Rs.7,17,681/-. The ld. AO observed that the commission is paid to MIPAC Polymers Ltd., on per piece basis and not on the basis of turnover. According to the ld. AO, the sales are made only to two parties and accordingly, the exact nature of services provided by MIPAC Polymers Ltd., was not provided by the assessee and hence, the same would fall within the ambit of provisions of Section 40A(2)(a) of the Act and the ld. AO accordingly, disallowed the commission payment of Rs.7,17,681/- in the assessment. This action of the ld. AO was upheld by the ld. CIT(A).

4.2. We find that the assessee has been making payment of commission on per piece basis to MIPAC Polymers Ltd., commencing from A.Y.2009-10 onwards. The sales made in A.Y.2009-10 was Rs.63,25,307/- and commission paid thereon was Rs.4,65,446/- which works out to Rs.7.36% of sales. Whereas in A.Y.2010-11, the sales effected through MIPAC Polymers Ltd., was Rs.1,68,33,316/- and commission paid thereon was Rs.7,17,681/- which works out to 4.26% of sales. This goes to prove that the commission percentage actually had decreased during the year under consideration when compared to earlier year. In any case, the commission paid by the assessee to the very same party on the same per piece basis was duly allowed as deduction by the ld. AO in the A.Y.2009-10. It is not in dispute that the said payment of commission was duly subjected to deduction of tax at source by the assessee. As stated earlier, in ground No.2 hereinabove, even for this disallowance the ld. AO had not brought any evidence on record any comparable instance to drive home the point that the payment of commission made by the assessee to MIPAC Polymers Ltd., is excessive or unreasonable to invoke the

provisions of Section 40A(2) of the Act. Hence, in our considered opinion, the provisions of Section 40A(2) of the Act could not be brought into operation at all in the instant case without bringing in any comparable instances on fair market value of commission payment. Hence, we have no hesitation in deleting the disallowance of commission payment of Rs.7,17,681/- made herein. Accordingly, the ground No.3 raised by the assessee is allowed.

5. The ground No.4 raised by the assessee is challenging the confirmation of addition made u/s.68 of the Act in respect of loan received in the sum of Rs.20,00,000/- and disallowance of interest paid on such loan amounting to Rs.93,890/-.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee has raised unsecured loan of Rs.20,00,000/- from Rangudyan Insurance Broking Services Ltd., on 01/11/2009. The assessee had paid interest of Rs.93,890/- to the said party during the year under consideration. The assessee has furnished the name, address of the creditor, PAN of the creditor, ledger account of the creditor together with confirmation from the loan creditor to prove the three ingredients of Section 68 of the Act i.e. identity, genuineness of transactions and creditworthiness of the creditor. The ld. AO does not dispute the filing of necessary documents by the assessee but from the perusal of the documents held that creditworthiness of the creditor was not proved by the assessee in the instant case. To arrive at this conclusion, the ld. AO observed that the assessee had filed a copy of return acknowledgement for A.Y.2010-11 of the concerned loan creditor wherein loss of Rs.20,84,614/- was shown thereon and accordingly, he concluded that the said loan creditor does not possess creditworthiness to

advance loan to the assessee. Accordingly, he proceeded to make addition u/s.68 of the Act treating the said loan received as unexplained cash credit. Consequently, the ld. AO disallowed interest of Rs.93,890/- paid on such unproved loan.

5.2. We have gone through the balance sheet of the loan creditor as on 31/03/2010 which is enclosed in page 43 of the paper book filed before us. From the said balance sheet, we find that the interest free funds available with the loan creditor was Rs.50,00,000/- and from which, this loan of Rs.20,00,000/- stands explained and hence, it could be safely concluded and presumed that the loan was advanced by the concerned loan creditor to the assessee only out of its interest free funds and this also proves that the creditor has got sufficient creditworthiness in its kitty to advance loan to the assessee.

5.3. We also find from the balance sheet of the loan creditor that the inter-corporate deposit placed by the concerned loan creditor with the assessee company is duly reflected in the asset side under the heading "loans and advances". The ld. AR made a statement from the Bar that this loan has been repaid by the assessee subsequently in A.Y.2012-13. Considering the aforesaid facts, we hold that the loan borrowed in the sum of Rs.20,00,000/- from Rangudyan Insurance Broking Services Ltd is to be considered as genuine as all the three ingredients of Section 68 had been proved by the assessee beyond doubt. Since the loan is hereby treated as genuine, the interest on such loan also becomes an allowable business expenditure. Moreover, it is not the case of the revenue that the said loan was not used for the purpose of business by the assessee. Accordingly, we delete the addition of Rs.20,00,000/- made u/s.68 of the Act and consequentially delete the disallowance with interest of

Rs.93,890/- made by the ld. AO. Accordingly, the ground No.4 raised by the assessee is allowed.

6. The ground No.5 raised by the assessee is challenging the confirmation of addition made u/s.68 of the Act in respect of public deposits received by the assessee in the sum of Rs.1,88,73,000/- and disallowance of interest paid of Rs.15,00,000/- on an adhoc basis.

6.1. We have heard rival submissions and perused the materials available on record. We find that assessee received deposits from public during the year under consideration amounting to Rs.2,25,95,000/-. The ld. AO vide notice dated 20/03/2012 directed the assessee to file the list of depositors who had invested more than Rs 5 lakhs, confirmation from them, their address, PAN and their income tax assessment particulars. In response, the assessee furnished the list of deposits raised during the year vide submission dated 10/07/2012. The ld. AO observed that the creditworthiness of the depositors are not proved by the assessee. The ld. AO insisted for furnishing the income tax return acknowledgement of all the depositors. The assessee submitted that it had raised public deposits from the general public pursuant to advertisement given in the news paper by following the prescribed procedure as provided under the Companies Act and statutory returns were duly filed with the Registrar of Companies in this regard. However, the assessee could gather confirmation letters from parties from whom deposits of more than Rs.5,00,000/-were received and the same were duly furnished before the ld. AO. Accordingly, the ld. AO accepted the fresh deposits as genuine only to the extent of Rs.22,00,000/- and proceeded to treat the remaining deposits of Rs.2,03,95,000/- as unexplained cash credit and made an addition u/s.68 of the Act in the assessment. Consequentially, the interest

paid on such added deposits was sought to be disallowed in the sum of Rs.15,00,000/- by the ld. AO on an adhoc basis.

6.2. Before the ld. CIT(A), the assessee could produce one depositor and assessee also submitted before the ld. CIT(A) that most of the depositors have been investing in fixed deposits in the assessee company since 2004 and had been regularly encashing some deposits made in earlier years and again re-investing fresh deposits in the assessee company. The assessee also furnished bank statements of two minor girls who had made investments in deposits in the assessee company apart from filing confirmation letter from the father of two minor girls. The assessee also submitted that all deposits are received only by account payee cheques and all these deposits were accepted by the assessee for the past many years and no addition has ever been made in earlier years in this regard. The assessee also submitted complete details about eight depositors who had made deposits above Rs.5,00,000/- alongwith details of copy of FD application form, FD receipts, balance confirmation, copy of ledger accounts etc., In all the cases, complete addresses and PAN details were provided. The assessee submitted that it had received fixed deposits from 134 depositors out of which the ld. AO had accepted fixed deposits received from only two persons as genuine. The assessee also stated that it had received deposits from 129 depositors below Rs.5,00,000/- per person which alone comes to Rs.1,88,73,000/- All the deposits were received in accordance with provisions of Section 58A of the Companies Act, 1956 and related rules framed thereon. The entire interest paid on such deposits was duly subjected to deduction of tax at source.

6.3. As stated earlier, the ld. AO made an addition of Rs.2,03,95,000/- towards deposits not explained by the assessee. The ld. CIT(A) gave further credit in respect of deposits received from the following persons:-

i) Vidhi Jatin Shah	-	Rs.5,07,000/-
ii) Isha Jatin Shah	-	Rs.5,15,000/-
iii) Pradhyumn Shah	-	Rs.5,00,000/-
Total		**Rs.15,22,000/-**

6.4. Hence, what is remaining is only Rs.1,88,73,000/- which represents deposits from 129 depositors where deposit from each person is less than Rs.5,00,000/-. Since the details for the same were not on record, the ld. CIT(A) confirmed the addition made u/s.68 in respect of the same.

6.5. The ld. AR before us pleaded that the entire list of deposits including the list of depositors who had invested less than Rs 5,00,000/- were also provided to the ld. AO. Moreover, in respect of remaining sum received of R.1,88,73,000/-, the same were received from 129 depositors below Rs.5,00,000/- per person. The details of deposits received from 129 depositors were duly provided before the ld. AO and the ld. CIT(A) together with name, address, folio number of deposit, PAN, amount received and mode of receipt of deposit. These details are enclosed in pages 54-63 of the paper book. From the perusal of the said details, we find that all the deposits were received only by cheques and assessee had furnished the entire details regarding the same before the lower authorities. When the deposits are sought to be raised by the assessee company pursuant to a public advertisement in statutory prescribed format, the assessee cannot be expected to provide confirmation from all the depositors who are general public. The assessee could at best possess only the deposit application form and the mode of receipt of deposit in its records. Of course, due diligence should be taken by the assessee to

ensure that all the necessary columns in the deposit application form are duly filled by the concerned depositors. In the instant case, we find all the columns in the deposit application form are duly filled which alone enabled the assessee to provide the complete list of name of the depositors, address of the depositors, PAN of the depositors and mode of receipt of deposit together with the amount thereon. Beyond this, the assessee cannot be expected to provide any further details as the deposits were raised from the general public. This is akin to share capital raised by the limited company pursuant to public issue or initial public offer. In fact, wherever the details of PAN are not available, the assessee had deducted TDS @20% while making payment of interest to them. In view of these observations, we have no hesitation in deleting the addition made in the sum of Rs.1,88,73,000/- in respect of deposits less than Rs.5,00,000/- received from 129 depositors. Since, the deposit amount has been accepted as genuine, the adhoc disallowance of interest made by the ld. AO in the sum of Rs.15,00,000 also stands automatically deleted. Accordingly, the ground No.5 raised by the assessee is allowed.

7. The ground No.6.1 raised by the assessee is seeking deduction u/s.80IB of the Act in respect of sale of scrap, exchange gain, sundry balances written back and miscellaneous income by treating the same as profits and gains derived from eligible industrial undertaking.

7.1. We have heard rival submissions and perused the materials available on record. We find that assessee had claimed deduction u/s.80IB of the Act as under:-

(i) For Masat (Silvassa) Unit	-	Rs.125,43,599/-
(ii) For Pondicherry Unit	-	Rs.109,34,445/-
Total		**Rs.234,78,045/-**
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7.2. The deduction u/s.80IB was claimed @30% of profits and gains of industrial undertaking located in the backward district. The ld. AO observed that in respect of sale of scrap, exchange gain, sundry balances written back and miscellaneous income, they are not profits derived from the manufacturing activity and hence not eligible for deduction u/s.80IB of the Act. The assessee submitted that the sale of scrap, exchange gain, sundry balances written back and miscellaneous income are totally business receipts derived from the manufacturing activity and hence, would be eligible for deduction u/s.80IB of the Act. We find that the Hon'ble Jurisdictional High court in the case of CIT vs. Rachna Udhyog Ltd., reported in 230 CTR 72 where the issue of exchange rate difference in the context of allowability of deduction u/s.80IB was held in favour of the assessee. We find that the Hon'ble Delhi High Court in the case of CIT vs. Sadhu Forging Ltd., reported in 11 taxmann.com 322 had held scrap sales to be part of business receipts of eligible business undertaking and hence, eligible for deduction u/s.80IB of the Act. Similar was the view taken by the Hon'ble Allahabad High Court in the case of CIT vs. Modi Xerox Ltd., reported in 365 ITR 200 and the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Micro Turners reported in 205 Taxman 18. In respect of sundry balances written back, there is absolutely no dispute with the same represents amounts lying in creditors' account which were treated as no longer payable and hence, written back to P & L Account. There is no dispute that when these creditors were created originally, they belong only to the eligible undertaking. Hence, when those credit balances lying in creditors account are written back to income, the same would only constitute business receipts of the eligible undertaking, thereby making the assessee company eligible for claim of deduction u/s.80IB of the Act. In view of the above, the ground No.6.1 raised by the assessee is allowed.

8. The ground No.6.2 raised by the assessee is challenging the confirmation of action of the ld. AO in allocation of interest of Rs.30,06,101/- to Masat Unit and Rs.38,26,169/- to Pondicherry Unit while computing deduction u/s.80IB of the Act.

8.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had paid interest of Rs.5,04,11,495/- during the year and this sum is debited in profit and loss account prepared for the purpose of Companies Act. The break-up of the said interest is as under:-

(i) Interest on term loans (net)	-	Rs. 93,85,239/-
(ii) Interest on cash credit	-	Rs.1,00,80,246/-
(iii) Other financing charges	-	Rs.2,82,73,530/-
(iv) Bank Charges	-	Rs. 26,72,480/-
Total	**-**	**Rs.5,04,11,495/-**
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8.2. It is not in dispute that Masat Unit and Pondicherry Unit are eligible for claiming deduction u/s.80IB of the Act. The assessee had prepared independent balance sheet for each of the eligible undertaking i.e. Masat Unit and Pondicherry Unit. The Balance sheet and profit and loss account together with its relevant schedules for Masat Unit are enclosed in pages 69-75 of the paper book. We find that there is an unsecured loan borrowing of Rs.5,51,09,378/- as on 31/03/2010 in Masat Unit and interest and financing charges of Rs.36,84,925/- has already been allocated to Masat Unit by the assessee company in the division wise profit and loss account. We find that the aforesaid unsecured loans were used for procuring assets for Masat Unit and accordingly, the interest paid

on such loans were already debited in the books of Masat Unit and deduction u/s.80IB claimed accordingly. Hence, there is no need for further allocation of interest to Masat Unit in the sum of Rs.30,06,101/- as done by the ld. AO. There is no bank borrowing made by the Masat Unit as is apparent from the balance sheet of Masat Unit. Hence, the general interest paid on bank borrowings, fixed deposit interests and other financing charges could not be allocated to Masat Unit while computing deduction u/s.80IB of the Act.

8.3. Similarly, we find from the division wise balance sheet, profit and loss account with its schedules for Pondicherry Unit, i.e eligible Unit, it has unsecured loan borrowings of Rs.9,10,98,492/- on which interest of Rs.2,99,171/- was paid. We find that the aforesaid unsecured loans were used for procuring assets for Pondicherry Unit and accordingly, the interest paid on such loans were already debited in the books of Pondicherry Unit and deduction u/s.80IB claimed accordingly. Hence, there is no need for further allocation of interest to Pondicherry Unit in the sum of Rs.38,26,169/- as done by the ld. AO. Hence, the general interest paid on bank charges and fixed deposit interests and other financing charges cannot be allocated to Pondicherry Unit while computing deduction u/s.80IB of the Act.

8.4. We further find from the division wise balance sheet that there is absolutely no interlacing of funds from one Unit to another Unit, hence, the ld. AO observation in this regard is merely incorrect. Accordingly, we hold that there is no need for allocation of general interest and financing charges incurred by the assessee to Masat and Pondicherry Unit and consequentially the claim of deduction u/s. 80IB of the Act for those two

eligible Units need not be reduced to that extent. Accordingly, the ground No. 6.2 raised by the assessee is allowed.

9. The ground No.6.3 raised by the assessee is challenging the confirmation of action of the ld. AO for allocating proportionate bank charges amounting to Rs.5,69,810/- while computing deduction u/s.80IB of the Act.

9.1. We have heard rival submissions and perused the materials available on record. The same reasoning that has been given for interest payment in ground No.6.2 above would hold good for bank charges also. We find that assessee has debited already bank charges of Rs.80,826/- in Masat Unit and Rs.65,191/- in Pondicherry Unit which is evident from the division wise profit and loss account. In view of the same reasoning given for ground No.6.2 above, the ground No.6.3 raised by the assessee is allowed.

10. The ground No.6.4 raised by the assessee is challenging the confirmation of exclusion of Rs.12,56,936/- from Masat Unit and Rs.49,31,708/- from Pondicherry Unit out of eligible profits u/s.80IB of the Act in respect of inter-Unit sales and confirming addition of Rs.10,749/- from Masat Unit and Rs.99,29,791/- from Pondicherry Unit in respect of inter-Unit purchases at market value.

10.1. We have heard rival submissions and perused the materials available on record. The ld. AO observed that Masat Unit and Pondicherry Unit have made sales to other Units of the assessee. The ld. AO observed that the profits arising from these sales are not included in the overall profits of the assessee as no profits are earned by making sales to other

Units of the assessee on the principle of mutuality. Accordingly, the ld. AO concluded that while computing the qualifying profits, these profits have to be excluded as the same do not enter into the assessee's gross total income. Therefore, the ld. AO estimated the profits in the ratio of net profit before depreciation, interest and tax to the sales ratio. The assessee pleaded that all the transactions in respect of inter-Unit purchases and sales were carried out at market value increase with provisions of Section 80IA(8) r.w.s.80IB(13) of the Act. This submission of the assessee is not disputed by the ld. AO as is evident from para 21 of his assessment order.

10.2. The ld. AO observed that the transfer price between inter-Units in respect of purchases and sales should be made at cost and hence, sought to exclude from the income of Masat Unit a sum of Rs.1,07,749/- and from Pondicherry Unit a sum of Rs.99,29,791/-. Similarly, in respect of purchases made by 80IB Unit from other Units, the ld. AO observed that the said transfer price should be at cost and accordingly, sought to exclude Rs.12,56,936/- from income of Masat Unit and Rs.49,31,708/- from income of Pondicherry Unit. It is not in dispute that the transactions of inter-Unit purchases and inter-Unit sales are made at market prices. This is in accordance with the provisions of Section 80IA(8) r.w.s. 80IB(13) of the Act. While, this is so, there is absolutely no need for determining the transfer price at cost. Hence, we hold that the ld. AO grossly erred in this act. Accordingly, the ground No. 6.4 raised by the assessee is allowed.

11. The ground No.6.5 raised by the assessee is challenging the confirmation of reduction of profit from Masat Unit by Rs.45,88,822/- and

Pondicherry Unit by Rs.23,44,293/- in respect of processing charges paid by eligible Units while computing deduction u/s.80IB of the Act.

11.1. We have considered rival submissions and perused the materials available on record. We find that the ld. AO in para 22 had held that Masat Unit had paid processing charges of Rs.1,05,78,962/- and Pondicherry Unit had paid processing charges of Rs.88,20,260/-, to outside parties. The ld. AO observed that this goes to prove that manufacturing activity has been outsourced by these Units. In the opinion of the ld. AO, any profit derived from outsourced manufacturing activity would not be eligible for deduction u/s.80IB of the Act. Accordingly, he held that profits arising from sale of outsourced manufactured projects should be excluded from the income of the 80IB Units. The assessee submitted that these processing charges related to printing charges, lid processing charges, moulding charges and handle fitting charges. It was submitted that when goods are manufactured by 80IB Units, certain manufacturing expenses are required to be incurred. These manufacturing expenses include certain processing work which could not be done at its factory as equipments for the same were not available. It is for this reason that such work had to be entrusted to other processors. If the 80IB Units had this facility in its factory, it would have incurred expenditure of labour, electricity, material, depreciation etc., Since processing charges form part of the manufacturing process of the 80IB Units, it cannot be said that processing charges are not relating to manufacturing activity of 80IB Units. It was further submitted that turnover of Masat Unit and Pondicherry Unit was Rs.18.71 Crores and Rs.23.82 Crores respectively. The processing charges for Masat Unit and Pondicherry Unit were Rs.1.06 Crores and 0.88 Crores respectively, which is not material when compared to its respective turnover. The ld. AO

however, did not heed to the aforesaid contentions and proceeded to reduce Rs.45,88,822/- and Rs,23,44,293/- relating to processing charges in respect of Masat Unit and Pondicherry Unit respectively.

11.2. We find that expression "manufacture" has been defined in Section 2(29BA) of the Act as under:-

> *"[(29BA) "manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—*
> *(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or*
> *(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;]"*

11.3. From the aforesaid definition, it is evident that all the activities relating to manufacture of goods whether the activities are conducted by the assessee or by outsiders to whom processing charges were paid and that both the parties i.e. the assessee as well as the outsiders would be covered by the definition of manufacture. Hence, the processing charges incurred by the assessee for manufacturing of goods had to be considered as part of the manufacturing activity carried out by the assessee thereby eligible for deduction u/s.80IB of the Act. Accordingly, the ground No.6.5 raised by the assessee is allowed.

12. The ground No.7 raised by the assessee was sought to be not pressed at the time of hearing. The same is reckoned as a statement made from Bar and accordingly, dismissed as not pressed.

13. In the result appeal of the assessee for A.Y.2010-11 is partly allowed.

ITA No.7342/Mum/2017 (A.Y.2010-11)- Revenue Appeal

14. The only issue to be decided in the appeal of the Revenue is as to whether the ld. CIT(A) was justified in deleting the disallowance made u/s.14A of the Act r.w.r. 8D of the Rules.

15.1. We have heard rival submissions and perused the materials available on record. We find that assessee did not derive any exempt income during the year under consideration. The ld. AO proceeded to make disallowance u/s.14A of the Act by applying the computation mechanism provided in Rule 8D(2)(ii) and Rule 8D(1)(ii) of the Act in the sums of Rs.1,23,19,640/- and Rs.11,79,312/- respectively. The ld. CIT(A) deleted the same in the absence of exempt income derived by the assessee. The ld. CIT(A) also observed that since there is no exempt income, the application of provisions of Section 14A of the Act would not come into play. Apart from that the ld. CIT(A) also held that assessee is having sufficient own funds in its kitty to make investments and hence, there cannot be any disallowance of interest in either case. At the outset, we find that the disputed quantum involved in the appeal of the Revenue is only Rs.1,34,98,952/-. The tax effect on which would fall below the monetary limit prescribed by CBDT for filing of appeal by the Revenue before this Tribunal. Incase, if the revenue is able to provide evidence that the case falls under any of the exceptions provided in the circular issued by the CBDT, then the revenue may prefer miscellaneous application for recalling of this order, if they so desire, in which circumstance, the revenue appeal alone shall be recalled by this Tribunal. Accordingly, the appeal of the Revenue is hereby dismissed as not maintainable.

15. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced on 10/05/2022 by way of proper mentioning in the notice board.

Sd/-	**Sd/-**
(VIKAS AWASTHY)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 10/05/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai