

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos.7669 & 7670/Del/2018
Assessment Years: 2013-14 & 2014-15

M/s. Unipatch Rubber Ltd., Building No.10, Khemka House, Community Centre, Saket, New Delhi	Vs.	ACIT, Circle-27(1), New Delhi
PAN :AAACU0325P		
(Appellant)		(Respondent)

Appellant by	Sh. K. Sampath, Advocate
Respondent by	Ms. Sarojini Xess, Sr. DR

Date of hearing	17.03.2022
Date of pronouncement	31.05.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals by the same assessee arise out of two separate orders, both dated 28.09.2018, of learned Commissioner of Income Tax (Appeals)-9, New Delhi, pertaining to assessment years 2013-14 and 2014-15.

2. The first common ground raised in both the appeals relates to disallowance of deduction under section 80IC of the Income-tax Act, 1961 (for short 'the Act') in respect of interest income.

3. Briefly the facts are, the assessee is a resident company engaged in the business of manufacturing and sale of tyre and tube, repair and purchase of allied products. Besides, the assessee also trades in shares and debentures of companies and units of mutual funds. For the impugned assessment year, the assessee had filed its return of income in regular course claiming deduction under section 80IC of the Act. In course of assessment proceeding, the Assessing Officer noticing that the assessee has claimed deduction under section 80IC of the Act, called upon the assessee to furnish the necessary details. On examining the details furnished by the assessee, the Assessing Officer found that the deduction under section 80IC of the Act was claimed in respect of Nalagarh Unit situated at Himachal Pradesh. On further verification of audited financial statement, he found that the assessee has included interest income earned on fixed deposits in the business profit for computing deduction under section 80IC of the Act. Therefore, he called upon the assessee to

explain, why the interest income not being profits of the eligible business should not be reduced from the profits of the business for computation of deduction under section 80IC. Alleging that assessee failed to furnish any satisfactory reply, the Assessing Officer disallowed assessee's claim of deduction under section 80IC of the Act in respect of interest income. Though, the assessee contested the aforesaid disallowance before learned first appellate authority, however, he did not succeed.

4. Before us, learned counsel for the assessee submitted, for manufacturing the finished products the assessee has to import raw materials from other States. He submitted, in course of such import, when the raw materials enter the boundaries of Himachal Pradesh, wherein the eligible unit has been established, entry tax is levied. He submitted, there was dispute between the entry tax authorities and the assessee on the issue of levy of entry tax. He submitted, keeping in view such dispute, to ensure uninterrupted non-invasive work of the assessee, with the intervention of the Hon'ble High Court an arrangement was made through which the assessee had to secure the entry tax payable by furnishing security deposits in the form of FDRs. He submitted, since the

FDRs were made out of the business funds they will come under the purview of section 80IC benefit. Further, he submitted, the fixed deposits made for securing part of the entry tax payable since, had a direct nexus with the manufacturing activities, interest income earned would be eligible for deduction under section 80IC of the Act. In support of such contention, he relied upon a decision of the Hon'ble Madras High Court in case of AVM Cine Products v. Dy. CIT (2020)421 ITR 431 (Mad)(HC). Thus, he submitted, assessee's claim of deduction under section 80IC of the Act in respect of interest income should be allowed.

5. Learned Departmental Representative, strongly relying upon the observations of departmental authorities, submitted that since the interest income earning activity of the assessee is not directly connected to the manufacturing activity, which is eligible for deduction under section 80IC of the Act, no such deduction can be allowed in respect of interest income.

6. We have considered rival submissions in the light of decision relied upon and perused the materials on record. The crux of the matter is, whether assessee's claim of deduction under section 80IC in respect of interest income earned on fixed deposits is

allowable. Section 80IC of the Act is a special provision in respect of certain undertakings and enterprises functioning in certain special category States. It provides that profits and gains derived by an undertaking or enterprise from manufacture or production of any article or things as specified in sub-section (2) of the said provision shall be eligible for deduction on fulfillment of certain conditions enshrined therein. Thus, what is eligible for deduction under the aforesaid provision is the profit and gain derived from manufacture or production of any article or things specified in the provision. Sub-section (7) of section 80IC provides that the provisions contained under sub-sections (5) and (7) to (12) of section 80IA shall so far as may be applied to section 80IC of the Act. Sub-section (5) of section 80IA provides that for computing deduction under section 80IC of the Act, the business relating to manufacture or production of any article or things in terms of sub-section (2) of section 80IC has to be taken as the only source of income of the assessee during the year, wherein, the deduction is claimed. The expression “derived from” has come up for interpretation before the Hon’ble Apex Court in case of Pandian Chemical Ltd. Vs. CIT (2003) 262 ITR 278 (SC). The Hon’ble Court

held that the expression “derived from” has a narrower connotation than the expression “attributable to”. The following observations of the Hon’ble Supreme Court would be of much relevance:

“5. The High Court rejected the submission of the appellant by relying upon the decision of this Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 , where this Court had clearly stated that the expression "derived from" had a narrower connotation than the expression 'attributable to' :

". . . In this connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression 'derived from', as, for instance, in section 80J. In our view, since the expression of wider import, namely, 'attributable to', has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity." (p. 93)

6. The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said :

"The word 'derived' is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition." (p. 328)"

7. If we apply the aforesaid legal principles to the facts of the present case, it has to be accepted that what will qualify for deduction under section 80IC of the Act is the profits and gains derived from manufacture/production of any article or things.

Thus, the profits and gains allowable as deduction under section 80IC of the Act must have a direct and proximate nexus with the manufacture/production of articles or things.

8. In case of Liberty India Ltd. vs. CIT (2009) 317 ITR 218, the Hon'ble Supreme Court while reiterating identical view has observed that the income qualifying for deduction must have a first degree relationship with the eligible business. In the facts of the present appeal, admittedly, the interest income which the assessee has claimed as deduction under section 80IC of the Act was earned on fixed deposits kept in bank for the purpose of securing the entry tax which was under dispute. However, it cannot be said that such interest income has any direct nexus with profits and gains derived from manufacture/production of article or things.

9. In our view, the dispute relating to entry tax would not have any impact on the manufacturing activity of the assessee, since in the worst case the assessee would have brought the raw materials/goods on payment of entry tax. Thus, payment or non-payment of entry tax would not have stalled the manufacturing activity of the assessee. Therefore, keeping in view the meaning

given to the expression derived from by the Hon'ble Supreme Court in the decision referred to above it cannot be said that the interest income earned by the assessee is part of profits and gains "derived from" manufacture or production of article or things. Therefore, in our humble opinion, the interest income earned by the assessee would not qualify for deduction under section 80IC of the Act. As regards the decision relied upon by learned counsel for the assessee, in our humble opinion, it is not applicable to assessee's case. In any case of the matter, we have arrived at our conclusion by applying the ratio laid down by the Hon'ble Supreme Court, which is the law of the land. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) on the issue.

10. The next common issue which arises for consideration is disallowance made under section 14A read with Rule 8D.

11. Briefly the facts are, in course of assessment proceeding for assessment year 2013-14, the Assessing Officer noticed that in the Audit Report furnished in Form 3CD the Auditor has reported an amount or Rs.13,19,905/- as expenditure to be disallowed under section 14A of the Act. Since, the assessee had not

disallowed such expenditure in the computation of income, the Assessing Officer added it back to the income of the assessee. While deciding assessee's appeal on the issue, learned Commissioner (Appeals) relying upon the decision of Hon'ble Supreme Court in case of Maxopp Investment Ltd. Vs. CIT (2018) 91 taxmann.com 154 upheld the disallowance.

12. Insofar as assessment year 2014-15 is concerned, the Assessing Officer in course of assessment proceeding, noticed that though the assessee had earned substantial exempt income during the year, however, it has not disallowed any expenditure under section 14A read with Rule 8D. When called upon by the Assessing Officer to explain the reason for not doing so, the assessee submitted that it has not incurred any expenditure for earning exempt income. The Assessing Officer, however, did not find merit in the submissions of the assessee and proceeded to compute the disallowance under Rule 8D. In the process, he disallowed an amount of Rs. 24,38,065/-. Though, the assessee contested the aforesaid disallowance before learned Commissioner (Appeals), however, the disallowance was sustained.

13. Before us, learned counsel for the assessee submitted, disallowance of interest expenditure under Rule 8D2(ii) cannot be made as the assessee had sufficient interest free fund available to take care of the investment. Further, he submitted, while disallowing the expenses under section 14A read with Rule 8D, the Assessing Officer has failed to record any satisfaction. Thus, he submitted, the disallowance made should be deleted.

14. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

15. We have considered rival submissions and perused the materials on record. Insofar as assessment year 2013-14 is concerned, as could be seen from the facts on record, in the Audit Report furnished by the assessee, the Auditor has reported an amount of Rs. 13,19,905/- as expenditure disallowable under section 14A of the Act. Whereas, in the return of income filed for the impugned assessment year, the assessee did not disallow such amount. Therefore, when in the Audit Report furnished by the assessee certain amount has been found to be disallowable, there was no necessity for the Assessing Officer to record any

satisfaction as such information is obtained from a document furnished by the assessee itself. Thus, we do not find any merit in the submissions of the assessee regarding non-recording of satisfaction by the AO. However, before us, the assessee has submitted that it had sufficient interest refund available to take care of the investment made. In this regard, we must observe, neither before the departmental authorities nor before us the assessee has furnished any working computing the disallowance under section 14A read with Rule 8D. Therefore, in absence of any such computation/working by the assessee, we are unable to record any conclusive finding regarding assessee's claim.

16. Insofar as assessment year 2014-15 is concerned, for this assessment year also, the assessee, on its own, has not disallowed any expenditure under section 14A, though; it had earned substantial exempt income of more than Rs. 2 crores. In the assessment order, the Assessing Officer has recorded satisfaction while disallowing expenditure under section 14A read with Rule 8D. Therefore, in our view, submission of learned counsel for the assessee that the Assessing Officer has not recorded any valid satisfaction is unsustainable. Moreover,

recording of satisfaction by the Assessing Officer regarding correctness of assessee's claim would arise when the assessee itself has computed disallowance under section 14A read with Rule 8D on its own in the return of income furnished to the department. When the assessee has not made any such claim in the return of income, the Assessing Officer cannot record satisfaction in vacuum. Having held so, it is necessary to observe, before us, learned counsel for the assessee has submitted that the assessee had sufficient interest free refund with it to take care of the investment. Since, the aforesaid claim of the assessee has not been examined factually by the departmental authorities with reference to availability of funds in the books of account; we deem it appropriate to restore this issue to the Assessing Officer for factual verification of assessee's claim.

17. As regards disallowance of administrative expenses under Rule 8D(2)(iii), the Assessing Officer has to compute the disallowance by considering only those investments, which have yielded exempt during the year. With the aforesaid observations, the issue is restored back to the Assessing Officer for fresh adjudication.

18. The only other surviving issue arising in assessment year 2013-14 relates to deduction claimed under section 80G of the Act.

19. We have heard the parties and perused the materials on record. As could be seen, the assessee had claimed deduction of Rs.12,500/- under section 80G of the Act on account of payment made to Lion's Club.

20. As observed by the Assessing Officer, the assessee could not furnish supporting evidence to prove the payment made. Thus, in absence of such evidence, the Assessing Officer disallowed the amount of Rs.12,500/-. Learned Commissioner (Appeals) also sustained the disallowance on the very reasoning.

21. Having perused the orders of the departmental authorities on the issue, we find, assessee's claim of deduction was disallowed due to non-furnishing of supporting evidence. Learned Commissioner (Appeals) has observed that the assessee not only failed to furnish the receipt issued by the donee but also could not furnish the eligibility certificate of the donee. In our view, for claiming deduction under section 80G of the Act, the assessee is required to furnish the supporting evidence, if called upon to do

so by the Assessing Officer. In absence of such supporting evidence, assessee's claim of deduction could not have been allowed.

22. However, to enable the assessee to furnish the supporting evidences to prove the claim of deduction under section 80G of the Act, we restore this issue to the Assessing Officer for fresh adjudication after due opportunity of being heard to the assessee.

23. In the result, both the appeals are partly allowed for statistical purposes, as indicated above.

Order pronounced in the open court on 31st May, 2022

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 31st May, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi