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

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.1296/Del./2016
(ASSESSMENT YEAR : 2012-13)

DCIT, Circle 12 (1), New Delhi.	vs.	M/s. Insecticides (India) Ltd., 401-402, Lusa Tower, Azadpur Commercial Complex, Delhi – 110 033.
		(PAN : AAACI3076P)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Devesh Parekh, CA
REVENUE BY : Shri Abhishek Kumar, Sr. DR

Date of Hearing : 06.07.2022
Date of Order : 13.07.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the ld. CIT (Appeals)-4, New Delhi dated 30.12.2015 for the assessment year 2012-13.

2. The Revenue has filed the revised grounds of appeal as under :-

> "1. In the facts and circumstances of the case, Ld. CIT (A) has erred in not appreciating that the reduction of claim of assessee (Rs.9,23,165 + 6,23,134 = 15,46,299) made u/s 80IB, is a result of reallocation has been done on the basis of working provided by the assessee himself which was also accepted by Ld. CIT (A)-XV while disposing the appeal of the assessee for AY 2006-07.

> 2. In the facts and circumstances of the case, Ld. CIT (A) has erred in not appreciating that the allocation has been done on the basis of working provided by the assessee himself which was also accepted by Ld. CIT (A)-XV while disposing the appeal of the assessee for AY 2006-07."

3. Brief facts of the case are that assessee company is engaged in the business of manufacturing and trading of pesticides, insecticides and agro chemicals. First of all, Assessing Officer (AO) examined R&D expenditure. AO observed as under :-

> "During the course of assessment proceedings, it is observed that the assessee company has claimed deduction u/s.80IB of the I.T. Act to the extent of Rs.11,16,97,684/-. The deduction has been claimed for its units at Samba & Udhampur, Jammu. The assessee has filed copy of Form 10CCB to justify the claim of deduction. The assessee has other units at Chopanki, Distt. Alwar, Rajasthan) & Dahej, (Gujarat). The assessee was, therefore, asked to furnish the unit-wise accounts. From the unit-wise accounts produced by the assessee, it is observed that the assessee has allocated the expenses between both the units, but the entire R & D Expenses has been claimed in Chopanki & Dahej units for which deduction u/s. 8OIB of the I.T. Act is not available. Therefore, the assessee was asked to explain as to why the R&D expenses should not be allocated to exempt units at Samba & Udhampur on which deduction u/s.80IB of the I.T. Act has been claimed."

4. Assessee's submissions are reproduced as under :-

> "With respect to R&D Expenses of Rs.1,48,01,393/- claimed during the year, it is submitted that the same has been incurred and used for the products manufactured at Chopanki & Dahej Units being established in the factory itself and the expenses are being incurred for the products manufactured there only. During the earlier assessment years, the Assessing Authority has proportionately disallowed the R&D Expenses on the pretext that these expenses are to be apportioned between the Samba and Chopanki Units in the sale ratios being utilized for the various products manufactured at the respective units of the assessee co. In this regard the assessee co. had preferred an Appeal before the Hon'ble CIT(A)- VIII, New Delhi for the A.Y. 2006-07 which has duly been disposed off by the then Hon'ble CIT(A)-VI1l, New Delhi restricting the. apportionment to 25% of total expenses for the exempted unit at Samba. The Dept has preferred a Second Appeal before Hon 'ble ITAT and the assessee co. also filed the cross objection and against the relief not granted

by CIT(A) which has been duly disposed off by the Hon 'ble ITAT and the matter was remanded back to the AA to consider and decide the issue relating to R&D Expenses and pass the orders accordingly.

In addition to above, in light of the orders passed by Hon'ble CIT(A)- VIII & Hon'ble ITAT, during the asst. proceedings for the A.Y.2011/12, your predecessor has followed the said orders and accordingly after making the disallowance of 25% and treating it as pertains to Samba unit(Exempt unit), the assessment was completed U/S 143(3) of the Act."

5. Considering the same, AO determined the deduction under section 80IB allowable as under :-

"3.3 The submissions of the assessee and the arguments offered have been considered. On the basis of working provided by the assessee company and the ratio for allocation of R & 0 Expenses confirmed by the CIT (A)-XV, New Delhi while disposing off the Appeal for the A.Y. 2006-07, the R&D expenses are allocated as under :-

A. Total R&D expenses claimed by the Assessee Company: Rs.1,48,01,393/-

B. 25% of Rs. 1,48,01,3931- comes to Rs.37,00,348/-

3.4 Keeping in view of the above facts and after verification of the details, I hereby hold that the 25% of R & 0 expenses be allocated to Samba & Udhampur Units in their sales ratio and accordingly the deduction claimed UIS 80-IB is reduced by Rs. 9,23,1651- (30% of Rs.30,77,215/-) Rs.6,23,134/- (100% of Rs.6,23,134/-) respectively.,

3.5 Therefore, the claim of deduction u/s 80IB is reduced as under:-

Deduction Claimed u/s.80IB- of the I.T. Act	Rs.11,16,97,684/-
Less: Claim reduced (As discussed above)	Rs. 15,46,299/-
Deduction u/s.80IB of the I.T. Act allowable	Rs.11,01,51,385/-

The deduction u/s.80IB of the I.T. Act is allowed to the extent of Rs.11,01,51,385/- as against the deduction of Rs.11,16,97,684/- claimed in the return. Since the assessee has furnished inaccurate particulars of its income, I am satisfied that this is a fit case for initiating penalty proceedings within the meaning of section 271 (1) (c) of the I.T. Act, 1961."

6. Thereafter, AO noted that during the course of assessment proceedings, assessee company vide its letter dated 05.12.2014 filed a

revised computation of income. That from the perusal of the revised computation, it is noticed that the assessee has claimed deduction of Rs.11,81,16,657/- on account of capital receipts. Consequently, the assessee has also reduced deduction u/s 80IB from Rs.11,18,97,684/- to Rs.7,83,92,030/-. That a revised Auditors Report on form No.10CCB has also been filed. That in the revised computation, the net taxable income has been declared at Rs.21,03,65,270/- as against Rs.29,51,76,280/- declared in the return of income filed on 29.09.2012.

7. AO was of the opinion that Hon'ble Apex Court in the case of Goetze India Ltd. 284 ITR 323 is applicable and the modified and revised claims of the assessee company with reference to deduction under section 80IB and allocation of common expenses between exempted and non-exempted units are not accepted. In this regard, AO observed as under:-

> "4.1 It is the claim of the assessee that the manufacturing unit of the assessee has been set up at Samba & Udhampur in J & K State and the same are in notified area entitled for the benefit of Excise Duty Refund in accordance with the Central Excise Notification No.56/57 dated 14.11.2002. During the year the assessee company has received excise duty refund amounting to Rs.11 ,81,16,657/- which was offered for taxation in the return of income filed on 29.09.2014. However, in the revised computation the assessee has claimed the same as capital receipts as according to the assessee the object for granting incentive of the Govt. is for development of Industries and generation of employment in the specified area of the State of J & K. The assessee has also relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Ponni Sugar & Chemicals Ltd(2008) 306 ITR 393(SC). The assessee has also relied upon the judgement of Hon'ble High Court of J & K delivered in the case of Shree Balaji Alloys vs. CIT (2011) 333 ITR 335(J&K).
>
> 4.2 It is further noticed that the assessee has excluded indirect and head office expenses from the units against which deduction u/s 80IB has been claimed and thereby enhanced the claim u/s 80IB on this account.

> 4.3 On perusing the assessment records of the company, it is observed that the assessee company has commenced the operation on 26.5.2004 at their Samba unit and all the assessments since assessment year 2005-06 onwards have been completed u/s 143(3) of the I.T. Act, wherein the assessee company has treated the Excise & Interest refunds as revenue receipts and duly accepted by A.O. while completing the assessment. Similarly, the allocation of expenses incurred at H.O. was allocated to exempt unit in their sales ratio and accepted in earlier years while framing the assessment u/s 143(3) of the I T Act. However, the assessee company has now modified/reduced the allocation of expenses to exempted units out of amount incurred by the H.O. to the tune of Rs…,55,24,817 & Rs. 49,92,345 originally allocated to Samba & Udhampur units respectively, treating as uncommon expenses and having no nexus with the exempt units .
>
> 4.4. In view of above facts, the contention as well as the revised computation filed by the assessee Company at assessment stage is not acceptable, being beyond statutory period allowed under the law for revising the Return of Income. The Hon'ble Supreme court in the case of Goetze India Ltd. 284 ITR (323) has held that the tax payer was not correct in amending original return by modifying the same at assessment stage without revising the return of income within permissible one as per law. Hence modified and revised claims of the assessee company w.r.t their deduction u/s 80-IB and allocation of common expenses between exempted and non-exempted units are not accepted and as such rejected."

8. Against the above order, assessee appealed before the ld. CIT(A). Ld. CIT (A) reproduced the submissions of the assessee. He decided the issue in favour of the assessee by noting as under :-

> "4. In the ground no. 1 & 2, the appellant has argued that they had filed a modified computation during the assessment proceedings, which should be accepted. The Assessing Officer has rejected the modified computation of income because the time limit to revise of return had already expired. To support his view the Assessing Officer has relied on the decision of Supreme Court in the case of Goetze India Ltd. 284 ITD 323. The appellant has contended that it can correct the return of income at any time before the passing of assessment order. It is argued that only because they had wrongly included an item of receipt, they cannot be made liable to pay tax on that. They have cited article 265 of the Constitution saying that no tax shall be levied except when authorized by law. To support their claim they have also cited CBDT Circular No. 14(XL) dated 11/04/1955, in which the Board has directed the AOs not to take

advantage of assessee's ignorance or mistake. They have also cited following judgements in their support:-

1. NTPC Ltd. vs. CIT 229 ITR 383 (SC);

2. CIT vs. Prabhu Steel Industry Pvt. Ltd. 171 ITR 530(Bom.);

3. Steel Ingots Pvt. Ltd. vs. CIT 86 Taxman 440 (MP);

4. CIT vs. Motor Industries Co. Ltd. 229 ITR 137 (Kar.).

In the light of above said submissions and the decisions of various courts it is apparent that the Assessing Officer was not justified in taxing a capital receipt as income. Therefore, I direct that the excise duty refund be treated as capital receipts and the modified claim of the appellant to the extent of its modified deduction u/s 80IB, be accepted. Thus the Ground no. 1 & 2 are allowed.

5. In the grounds no/3 & 4 the appellant has stated that the Assessing Officer was wrong in not accepting the corrected computation of income submitted during the course of assessment proceeding. In corrected computation the appellant has treated refund of excise duty as capital receipt whereas these subsidies were claimed right from the beginning as part of income of the appellant. The contention of the appellant is based on interpretation of law regarding refunds on account of excise duty allowed to the units in backward areas. The appellant has drawn my attention to the Industrial Policy of J&K and the benefits allowed to the industries in that states. The idea to develop industries in such backward areas is designed keeping in mind the public interest. The appellant has relied on various case laws in which the subsidies claimed by such units have been treated as capital receipts. They have cited following decisions:-

> CIT vs. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC);

> Shree Balaji Alloys vs. CIT (2011) 333 ITR 335 (J&K);

> Vinod Kumar Jain vs. ITO, Jammu Special Bench, Amritsar (ITAT);

> CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd. (Bom. HC).

In these grounds of appeal the appellant has claimed excise duty refund as capital receipts instead of the revenue receipts considered to be so in original return of income. I agree with the argument of the appellant that the excise duty refund is a capital receipts and the deduction u/s 80IB would be modified accordingly. It will ultimately reduce the claim u/s 80IB by Rs 4,59,55,444/- as per the working submitted by the appellant. The modified claim

certified by the CA was filed before the Assessing Officer also and due to this there is no loss to the revenue as such. In this regard the appellant has relied upon the various judgements cited in the submissions. In view of all this the AO is directed to treat the excise duty refund of Rs 11,81,16,657/- as capital receipt to be excluded from the income of the appellant.

6. Ground no. 5 & 6 - In these grounds the appellant has contended that in the return of income the allocation of expenses between exempt and non-exempt units were claimed in the sales ratio including the expenses incurred by the head office. The appellant had submitted before the AO the modified working of common expenses allocated among exempt and non-exempt units and also submitted the working of the same as claimed in the return of income. The appellant's arguments is based on the language of section 80IB where the word "derived from" has been used after considering the term "derived". It is settled law that the income should have direct nexus between profit and gains and the industrial undertaking. They have cited a few judicial decisions as mentioned in the submissions. Keeping in view the principle laid down by the apex court in the case of Liberty India (2009) 317 ITR 218 (SC), it can be said that indirect expenses which do not have any direct nexus with the undertaking cannot be deducted in computing the profit of the undertaking. The appellant has been able to establish the direct nexus between income and expenses of the industrial units situated at Samba and Udhampur. It is also argued that the indirect and head office expenses have been excluded from allocation amongst exempt and non-exempt units.

This modified claim has resulted in increase in deduction u/s 80IB by an amount of Rs 1,26,49,790/-. The Assessing Officer is directed to allow the same to recompute the taxable income."

9. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the records.

10. Ld. DR of the Revenue relied upon the order of AO. Per contra, ld. Counsel of the assessee relied upon the order of ld. CIT(A) and placed reliance upon catena of case laws in support of the provisions that assessee's claim deserves to be allowed.

11. First of all, we note that ld. CIT (A) has erred inasmuch as the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. (supra) which is fully applicable on the facts of the case wherein proper and due revised return was held to be *sine qua non* for acceptance of the revised claim and it was clearly held that ld. CIT (A) has no power to make any such concession stop. However, in the same order, it was held that the order in this case does not impinge upon the powers of the ITAT to admit and adjudicate upon grounds raised otherwise then by proper revised return. In accordance with the decision, we direct that the revised claim is to be admitted and adjudicated upon by the AO. However, we note that in the assessment order framed qua deduction under section 80IB, AO only dealt with and allowed the claim and discussed on merits only that aspect of claim under section 80IB which were mentioned in the original claim. However, as regards the revised claim, the merits have not been gone into by the AO and he has rejected the claim as unadmitted. On the other hand, ld. CIT (A) has admitted the claim and decided the issue very laconically placing reliance upon several case laws. There is no discussion in the order of ld. CIT (A) as to who has examined the factual aspect of the case. He simply accepted the statement of the assessee and passed the same as his own order relying upon the case laws and proposition.

12. Even after, referring to the decision of the Hon'ble Apex Court in the case of Liberty India (2009) 317 ITR 218(SC) which expounded that indirect expenses which do not have any direct nexus with the undertaking cannot be deducted in computing the profit of the undertaking. He went on to accept that the assessee has been able to establish the direct nexus between income and expenses of the industrial units situated at Samba and Udhampur. He also noted that it is also argued that the indirect and head office expenses have been excluded from allocation amongst exempt and non-exempt units. Based on such reasoning, he has directed the Assessing Officer to re-compute the taxable income. We find that the above exhibits lack of proper application of mind. Without referring to any factual material on the basis of arguments and submissions, ld. CIT (A) has given finding on factual aspects which is not sustainable in law.

13. As held by Hon'ble Supreme Court in the case of Kapurchand Shrimal vs. CIT 131 ITR 451, it is the duty of the appellate authority to correct the errors in the orders of authorities below and remand the matter for re-adjudication with or without direction unless prohibited by law. Accordingly, in the interest of justice, we remit this issue to the file of AO. AO shall examine the grounds which are rejected by him by duly considering the merits of the case, factual aspects and case laws in this

regard. Needless to add, assessee should be granted adequate opportunity of being heard. As regards the various case laws cited by ld. counsel of the assessee, the same shall be considered by the AO after examining factual aspects as referred by us above.

12. In the result, the appeal of the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on this 13th day of July, 2022.

Sd/-	**Sd/-**
(CHANDRA MOHAN GARG)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 13th day of July, 2022
TS

Copy forwarded to:

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

AR, ITAT
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