**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"E" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, HON'BLE JUDICIAL MEMBER AND SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 876/MUM/2021 (A.Y: 2015-16)**

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| M/s. Time Technoplast Limited<br>2nd Floor, 55 Corporate Avenue<br>Saki Vihar Road, Andheri (E)<br>Mumbai- 400072<br><br>**PAN: AAACT2783J** | *v.* | Pr.CIT -3<br>Room No. 612, 6th Floor<br>Aayakar Bhavan<br>M.K. Road<br>Mumbai - 400020 |
| **(Appellant)** | | **(Respondent)** |

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| **Assessee by** | **:** | **Shri Gaurav Kabra** |
| **Department by** | **:** | **Shri Rajesh Damor** |
| | | |
| **Date of Hearing** | **:** | **02.06.2022** |
| **Date of Pronouncement** | **:** | **14.07.2022** |

**O R D E R**

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Principal Commissioner of Income Tax– 4, Mumbai [hereinafter in short "Ld. Pr.CIT"] dated 23.03.2021 for the A.Y.2015-16.

**2.** Brief facts of the case are, assessee filed return of income for the A.Y. 2015-16 on 31.03.2016 declaring total income of ₹.29,30,01,550/-.

The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. The assessment was completed u/s. 143(3) of the Act on 27.12.2017 accepting the return of income. While examining the assessment records Learned Principal Commissioner of Income Tax, Mumbai-3 [hereinafter in short "Ld. Pr.CIT"] observed that the Assessment Order passed on 27.12.2017 appeared to be erroneous in so far it was prejudicial to the interest of the Revenue and he observed following reasons: -

> *"1. Survey action u/s 133A of the Act was conducted in this case by the DDIT (Inv) Mumbai on 02.01.2015, wherein violations of conditions laid down within the provisions of section 80IA/80IC of the Act was found regarding claim made by the assessee. Evidences were found that there was interunit purchase/ transfer of pre used plant and machinery and its value was more than 20% of the total value of plant & machinery, which is in violation of explanation 2 to section 80IB/80IC of the I.T. Act, 1961. This was also admitted by the Director of the assessee company in his statement made during the survey action.*
>
> *1.1 During the year under consideration the assessee has claimed deduction u/s 80IC amounting to Rs. 1,56,83,226/- in respect of Pantnagar Unit-1. In Assessment orders passed u/s 143(3) in the assessee companies case for AY 2013-14,2014-15 and 2016-17, disallowances/ additions have been made within the provisions of section 80IB/80IC of the I.T.Act, 1961. Even though appeals filed by the assessee on this issue for A. Y. 2013-14 & 2014 15 have been decided by the Ld. CIT(A) in favour of the assessee, the Department has not accepted the decision and filed second appeal against the decision of Ld. CIT(A).*
>
> *1.2 To avail deduction u/s 80IC(4)(ii) of the Act, assessee should comply with explanation 1 & 2 of provision of section 80IA(3) of the Act, which requires that the total value of the machinery or plant so transferred should not exceed 20% of the total value of the plant*

*and machinery used in the business. In view of the facts mentioned above, conditions laid down within the provisions of section 80IA/80IC of the Act were not fulfilled by the assessee company. Accordingly, the assessee's claim of deduction u/s 80IC of Rs. 1,56,83,226/- should have been disallowed in the assessment order passed u/s 143(3) of the Act dated 27.12.2017.*

*2. During the course of survey proceedings, it was found that there were discrepancies in the value of machinery found in the Pantnagar Unit I & II and the amount appearing in 10CCB Audit report. Moreover, in the assessment order u/s 143(3) of the Act, in assessee's case for A. Y. 2013-14 the claim of depreciation of Rs. 10,38,145/- in respect of machinery at Pantnagar unit-1 was disallowed and for A.Y. 2014-15, depreciation claimed of Rs. 4,20,458/ in respect of machinery at pantnagar Unit-II was disallowed.*

*2.1 Even though appeals filed by assessee on this issue for A. Y. 2013-14 & 2014-15 have been decided by the Ld.CIT(A) in favour of the assessee, the Department has not accepted the decision and filed second appeal against the decision of Ld. CIT(A). Hence the assessee's claim of depreciation of Rs. 2,89,198/- and Rs. 1,17,128/- of Pantnagar Unit 1 and Unit II respectively, should have been disallowed in the assessment order passed u/s 143(3) dated 27.12.2017.*

*3 During the year under consideration, the assessee has made investment, income from which is exempt from income tax and claimed exempt dividend income amounting to Rs. 1,17,00,252/-. Perusal of the P & L account shows that the assessee has disallowed Rs. 1,00,000 u/s 14A relating to exempt income. However it is seen that the same has not been worked out as per Rule 8D of the I.T. Rules. The disallowance u/s 14A should have been correctly worked out as per Rule 8D and added to the total income in the assessment order passed u/s 143(3) dated 27.12.2017.*

*4. During the course of survey proceedings, it was found that the assessee company had taken accommodation entries from M/sShreehi Enterprises, M/s Modern Traders, M/s deep Enterprises and M/s Radhika Enterprises. Shri Anil Jain, director of the assessee company had agreed for disallowance of Bogus purchases in their statement recorded under oath. For A. Y. 2013 14, 2014-15 and 2016-17, in the assessee's case the purchases made from the above entities were disallowed in the assessment orders passed u/s 143(3) pf the Act dated 27.12.2017.*

*4.1 During the course of assessment proceedings for AY 2015-16, details should have been obtained in respect of purchases made from*

*the above entities, which was not done so and the issue of bogus purchases booked by the assessee during the year under consideration remained be examined in the assessment order passed u/s 143(3) of the Act dated 27.12.2017."*

**3.** Accordingly, the notice u/s. 263 of the Act was issued and served on the assessee, in response assessee filed a detailed letter dated 19.02.2020. After considering the detailed submissions which is placed on record in Page No. 3 to 9 of the Ld. Pr.CIT order, Ld. Pr.CIT rejected the contentions of the assessee and held that the order passed by the Assessing Officer u/s. 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue. Accordingly, by exercising powers u/s. 263 of the Act he set aside the Assessment Order passed u/s. 143(3) and directed the Assessing Officer to make afresh assessment, after giving sufficient opportunity to the assessee.

**4.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

*"1. On the fact and circumstances of the case as well as in Law, the Learned Principal Commissioner of Income Tax (PCIT) has erred in initiating proceedings U/S 263 of the Income Tax Act, 1961 (the Act) vide show cause notice dated 12.02.2020 and passing an order U/s 263 of the Act without considering facts & Circumstances of the case.*

*2. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in passing Revision Order u/s.263 of the Income Tax Act, 1961 for the assessment order u/s. 143(3) of the Act passed by the Learned Assessing Officer after making*

*adequate enquiries and application of mind, without considering the facts and circumstances of the case.*

*3. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in considering the order passed u/s. 143(3) of the Income Tax Act, 1961 by the Learned Assessing officer is erroneous and prejudicial to the interest of the revenue, without appreciating the facts and circumstances of the case.*

*4. On the fact and circumstances of the case as well as in Law, the Learned Principal CIT has erred in setting aside Assessment order passed by the Learned Assessing Officer and directing him to reframe the assessment afresh, without considering the facts and circumstances of the case.*

*5. The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

**5.** At the time of hearing, Ld. AR submitted that all the grounds raised by the assessee are the contentions raised by the Ld. Pr.CIT in his order and he brought to our notice similar issue was came up for adjudication before ITAT in ITA.Nos. 6207, 6208, 6209, 6210, 6211, 6212 & 6213/Mum/2017 for the A.Y. 2008-09 to 2014-15 and ITAT by common order dated 08.10.2021 has decided all the issues in favour of the assessee which is placed on record and he brought to our notice findings of the ITAT in the above said order in the form of a chart.

**6.** It is submitted before us that exactly similar issues were raised by the Ld. Pr.CIT in the current revision proceedings. He submitted that the Ld. Pr.CIT has passed the impugned order with the same issues and facts in the previous Assessment Years. Therefore, these issues are already

settled in favour of the assessee. He prayed that the order passed by the Ld. Pr.CIT may be set-aside.

**7.** On the other hand, Ld. DR submitted that ITAT has considered all the issues in the previous Assessment Years, however, he submitted that the issue relating to bogus purchases are factual matters and he agreed that other issues are already considered by ITAT. Therefore, he submitted that Para No. 14 and 15 of the Tribunal order may be read together.

**8.** Considered the rival submissions and material placed on record, we observe that the issues raised by the Ld. Pr.CIT in revision proceedings are exactly similar to the issues raised in A.Ys. 2008-09 to 2014-15 in appeal before Coordinate Bench and the Coordinate Bench has already considered all the issues and decided the issues as under: -

**9.** In regard to contention raised by the Ld. Pr.CIT in his 263 order with regard to section 80IC of the Act, the Coordinate Bench considered the similar issue for the Assessment Year 2008-09 and held as under: -

> *"16. The issue raised in ground No.4 & 5 is against the allowance of deduction by Ld. CIT(A) which was rejected by the AO on the ground that assessee is not fulfilled the condition as envisaged in section 80IB/section 80IC of the Act.*
>
> *17. The facts in brief are that during the course of survey on the Pantnagar Unit No.1 it was found by the survey team that the*

*preconditions as envisaged under section 80IB/section 80IC of the Act were not satisfied. During the course of survey on 02.01.2015 a physical inventory of plant & machinery installed at the unit was taken and it was found that there were inter unit purchases/transfers pre-used plant & machinery in the unit No.1 which accounted for more than 20% of the total value of plant & machinery. According to survey team the plant & machinery found at the time of survey after allowing depreciation of 20% was Rs.2,62,77,441/- whereas the total value of pre-used interunit transferred machinery after depreciation was Rs.1,61,84,487/- and thus the pre-used machinery accounted for 61.59% of the total value of machinery in Pantnagar Unit No.1 as given by the AO in para 5.1 of the assessment order.*

*18. The AO also noted that during the course of survey the issue of contravention of explanation to section 80IB(2)(iii)(c) of the Act was confronted to Shri Anil Jain, Director who in his statement recorded dated 03.01.2015 admitted that assessee company has transferred plant & machinery from other units to another units and the value of pre used plant & machinery in Pantnagar Unit No.1 & 2 was more than 20% of the total value of plant & machinery in those units. The AO noted that Shri Anil Jain in his sworn statement has agreed for withdrawal of deduction under section 80IB of the Act with regard to Pantnagar Unit No.1. Finally the AO issued show cause notice to the assessee during the course of assessment proceedings as to why the deduction under section 80IB of the Act in respect of Pantnagar Unit No.1 of Rs.9,97,57,557/- should not be rejected. The assessee replied to the said show cause notice by submitting that deduction claimed under section 80IB/section 80IC of the Act in respect of Pantnagar Unit No.1 can not be disallowed as the value of pre-used machinery is less than 20% of the total machinery. The assessee also submitted the list of plant & machinery purchased by the assessee from various parties for Pantnagar Unit No.1 for the instant year and explained that the total WDV of machinery purchased was amounting to Rs.8,64,16,517/- in Pantnagar Unit No.1 whereas the used machinery was nil. The assessee submitted the copies of bills of purchases in respect of machinery purchased and contended that there was no violation of provisions of 80IB/80IC of the Act and therefore, the assessee is eligible for deduction under section 80IB/section 80IC of the Act. On the statement of Shri Anil Jain, director of the company, the the ld AR submitted that he has agreed to withdraw the deduction under section 80IB/section 80IC as per the rules and regulations of the Act. Since the assessee has submitted the bills and vouchers pertaining to plant & machinery and also submitted that pre-used plant & machinery was nil, therefore, assessee is eligible for deduction under section 80IB/80IC of the Act. However, the AO rejected the contentions and submissions of the assessee by observing that assessee did not fulfill the conditions as*

*envisaged under section 80IB/section 80IC of the Act and consequently rejected the claim of the assesse amounting to Rs. 9,97,57,577/-.*

*19. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:*

*"Ground No.5.& 6*

*As can be seen from the tables submitted by the appellant, the total inter unit transfers of pre used plant anbTrnachinery was less than 20%. The AO failed to bring any material on record to prove that the assessee was not eligible to claim the benefits of deduction u/s. 80IC of the Act. He has failed to point out any defects in the details filed with him by the assessee. He has merely relied on a statement recorded u/s. 133(A) of the Act which itself was not incriminating in the first place. Thus, in view of the facts of the case, I hold that the AO has erred in disallowing the deduction u/s. 80IC of the Act. Hence, the addition made by the AO on this ground is hereby deleted and the appeal on this ground is allowed.*

*In view of the above mentioned Para, I hold that since the facts of the case are identical to the assessment year 2012-13, I hereby delete the addition made in the hands of the appellant."*

*20. After hearing the rival contentions of both the parties and perusing the material on record, we find that the first year of claim and allowance of deduction under section 80IB/section 80IC of the Act was A.Y. 2007-08. The claim of deduction was allowed by the AO under section 80IB/section 80IC of the Act in the first year of operation in the assessment as framed under section 143(3) of the Act, a copy of which is filed in the paper book. The undisputed facts are that the claim of deduction in the first year of operation i.e A.Y. 2007-08 in respect of Pantnagar Unit No.1 has not been disturbed by the Revenue whereas the deduction in the subsequent years including A.Y. 2008-09 was rejected on the basis of survey conducted on the various units of the assessee including Pantnagar Unit No.1 in which the survey team recorded a finding that the value of old and pre used plant & machinery which was transferred from various units was more than 20% of the total value of plant & machinery and therefore assessee is not eligible for the deduction under section 80IB/section 80IC. After hearing both the parties and perusing the material on record, we find that the AO has not brought anything on record to corroborate that statement as recorded during the course of survey whereas the assessee has filed all purchase bills, total value of plant & machinery and also the fact that there was no pre used plant & machinery transferred from other units to Pantnagar Unit No.1 and therefore there is a merit in the contention of the assessee*

*that the conditions as envisaged by section 80IB/section 80IC are duly satisfied and there is no violation of the same. We do agree with the finding of the AO that Shri Anil Jain during the course of survey has agreed to withdraw his claim but as submitted during the course of assessment that withdrawal was made subject to the rules and regulations and terms & conditions as contained in Income Tax Act. We note that Ld. CIT(A) after taking into consideration of all these facts and evidences has allowed the claim of the assessee under section 80IB/section 80IC whereas the AO has relied heavily on the finding of survey team without giving any finding on the various evidences filed during the course of assessment proceedings by the assessee. We also find merit in the contention of the assessee that once the claim of deduction under section 80IB/section 80IC is allowed in financial year the same can not be disturbed in the subsequent year unless there is change in facts. Under these circumstances, we do not find any merit in the ground No.4 & 5 filed by the Revenue and therefore the same are dismissed by upholding the order of Ld. CIT(A).*

*21. In the result, the appeal of the Revenue is dismissed.*

**10.** This issue was already decided by the ITAT in favour of the assessee, accordingly, Ground No. 1 raised by the assessee is allowed.

**11.** In regard to contention raised by the Ld. Pr.CIT in his 263 order with regard to discrepancies in the value of machinery found in the Pantnagar Unit I and II and the amount appearing in 10CCB audit report, the Coordinate Bench considered the similar issue for the Assessment Year 2008-09 and held as under: -

*"10. We have heard the rival contentions of both the parties and perused the material on record. We find that the addition made by the AO on account of excess claim of depreciation of Rs.2,10,48,677/- on the inflated plant & machinery of Rs.6,01,39,077/- as found by the survey team the detail whereof is given in para 6 of the assessment order. We note that in this case in respect of unit No.1 the total value of plant & machinery as per form*

*10CCB was Rs.8,64,16,518/- whereas total value of machinery taken at the time of survey was Rs.2,62,77,441/- after providing depreciation of 20% which has resulted into this difference. We have also examined the yearwise details of plant & machinery filed by the assessee along with details of addition, deletion, depreciation, additional depreciation and net WDV yearwise and also the findings of the order of Ld. CIT(A) that no corroborative evidences were brought on records by the AO to support these additions, appear to be convincing and plausible. We do agree with the contentions of the Ld. A.R. that the unit No.1 at Pantnagar which was commissioned in A.Y. 2008-09, the total value of machinery reported therein and found at the time of survey that too in 2015 after approximately seven years cannot match with value reported in form 10CCB. Considering all these facts, we earnestly hold that the addition was rightly deleted by Ld. CIT(A). Similarly, in respect of unit No.2 the machinery as per form 10CCB was found as nil whereas physical inventory during survey showed value of machinery of Rs.1,93,23,298/- which was treated as unexplained by the AO. We find reasoning in the contentions of the assessee that form 10CCB is filed in respect of those units for which the profit is claimed under section 80IC/section 80IB of the Act and not the other units where no such claim was made. In unit No.2 the assessee has not claimed any deduction under section 80IC/section 80IB and therefore value of machinery was reported as nil in Form 10CCB. However, the unit was functional and operational and there was plant & machinery. So upon the physical inventory being taken by the survey team, the plant & machinery was bound to be there which was used in the manufacturing process of the unit. The Ld. CIT(A) has given a correct findings and passed reasoned order by deleting the addition by holding that the assessee has not doubted the genuineness of the books of accounts or rejected the books of accounts under section 145(3) of the Act. The Ld. CIT(A) also recorded that purported statements recorded during the course of survey which were not backed up by any corroborative evidences. In view of these facts, we are inclined to dismiss the ground No.1 by upholding the order of Ld. CIT(A).”*

**12.** This issue was already decided by the ITAT in favour of the assessee, accordingly, Ground No. 2 raised by the assessee is allowed.

**13.** In regard to contention raised by the Ld. Pr.CIT in his 263 order with regard to section 14A disallowance under Rule 8D of I.T. Rules, the Coordinate Bench considered the similar issue for the Assessment Year 2013-14 and held as under: -

> *"22. The issues raised in these appeal i.e. ITA No. 6208 to 6211/Mum/2017 are identical to ones as decided by us in ITA No. 6207/Mum/2017 A.Y.2008-09. Similarly issues raised in ITA No. 6212 and 6213/Mum/2017 are also same as decided by us in ITA No. 6207/Mum/2017 A.Y.2008-09 except issue of deletion of disallowance u/s 14A of the Act which is decided separately. Therefore our decision in ITA No. 6207/Mum/2017 A.Y.2008-09 would, mutatis mutandis, apply to these as well.*
>
> *23. The issue raised in ground No.6 in ITA No.6212/M/2017 A.Y. 2013-14 is against the deletion of disallowance of Rs.2,89,83,197/- by Ld. CIT(A) as made by the AO under section 14A of the Act read with Rule 8D of IT Rules.*
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> *…….*
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> *26. After hearing the rival contentions of both the parties and perusing the material on record, we find that the Ld. CIT(A) allowed the appeal of the assessee on the ground that assessee's own funds were far more than the investments in share and securities. We note that assessee's own funds in the current year are Rs.70,128.05 lakhs whereas the investments in the exempt income yielding security are Rs.9,063.06 lakhs. Thus the Ld. CIT(A) has rightly deleted the disallowance by following the decision of Jurisdictional High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.). The Ld. CIT(A) also noted that assessee has made investments in various foreign companies that dividends whereof are taxable and therefore liable to be excluded while computing disallowance under section 14A read with rule 8D. In view of these facts, we are inclined to uphold the order of Ld. CIT(A) by dismissing the ground No.6 of the Revenue."*

**14.** This issue was already decided by ITAT in favour of the assessee, accordingly, Ground No. 3 raised by the assessee is allowed.

**15.** In regard to contention raised by the Ld. Pr.CIT in his 263 order with regard to accommodation entries from various parties as bogus purchases, the Coordinate Bench considered the similar issue for the Assessment Year 2008-09 and held as under: -

> *"15. After hearing the rival parties and perusing the material on record, we find that in the statements recorded during the course of survey Shri Anil Jain, director and Mr. Bharat Vargheria, Director, Finance of the said company offered the said purchases as additional income in the hands of the assessee, however, this was not offered in the return of income on the ground that the said purchases were not bogus and in fact represented the actual purchases made from these parties. The Ld. D.R. strongly argued before us that this is a case of manufacturing company and therefore the rate of GP can not be applied as this can be done where goods were purchased and sold in the normal course of business of trading. Therefore, the order of Ld. CIT(A) is wrong whereas the Ld. A.R., on the other hand, strongly defended the order of Ld. CIT(A) as the same is a reasoned order passed after following the decision of Hon'ble Gujarat High Court in the case of Simit P. Sheth (supra). After considering all these facts and circumstances, we are of the opinion that Ld. CIT(A) has rightly directed the AO to add a profit margin on the said bogus purchases which could not be proved by the assessee before the AO as the addition of entire purchases would lead to unrealistic and impracticable profits in the hands of the assessee. We do not find nay merit in the contention of the DR that profit rate can be applied to a trading company and not manufacturing company. Moreover, the assessee is a very big company who is filed return of income of Rs.16,88,64,927/- and to book bogus purchases of such a small quantum seems to be not correct. The assessee has purchased the goods which were paid by account payee cheque and supported by necessary bills vouchers, deliver challans etc. We note that the AO has not brought any evidence on record to back the statements given during the course of survey as the statements in itself have no evidentiary value unless other corroborating evidences are brought on record. Therefore, we are inclined to uphold the order of Ld. CIT(A) on this ground by dismissing the ground No.2 & 3 of the Revenue."*

**16.** Since ITAT has already estimated the Gross Profit ratio @12% in the earlier Assessment Years, therefore we also direct the Assessing Officer to disallow 12% of the bogus purchases as disallowance in this assessment also.

**17.** Since the issue raised by the Ld. Pr.CIT in 263 order are already decided in favour of the assessee by the Coordinate Bench, therefore we do not see any reason not to set-aside 263 order passed by the Ld. Pr.CIT. Except the issue of bogus purchases, we direct the Assessing Officer to follow the earlier direction of the Coordinate Bench of ITAT in assessee's own case by disallowing 12% of the bogus purchases. Accordingly, 263 order is set aside.

**18.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th July, 2022

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| Sd/- | Sd/- |
| **(ABY T. VARKEY)** | **(S. RIFAUR RAHMAN)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai / Dated 14.07.2022
Giridhar, 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, Mum**