

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.861/Chny/2018
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

M/s. Carbonaire Industries Madras Pvt. Ltd. No. 207 (old no. 129) St. Mary's Road, Alwarpet, Chennai – 600 018.	बनाम/ Vs.	DCIT Corporate Circle -1(2), Chennai.
स्थायी लेखा सं./जी.आइ.आर.सं./ PAN/GIR No. AAACC-4731-H		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri T. Vasudevan (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri M. Rajan (CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	05-09-2022
घोषणा की तारीख / Date of Pronouncement	:	05-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal is a recalled matter since the appeal was disposed-off by Tribunal vide common order dated 24.09.2019 for Assessment Years (AY) 2008-09 & 2009-10. However, the order for AY 2009-10 was recalled vide MP No.306/Chny/2019 order dated

22.07.2022 for limited purpose of adjudication of ground nos. 2 and 7.

The same read as under: -

2. The CIT(A) erred in dismissing the appeal without adjudicating the issue of the claim of assessee for deduction under sec.10B.
7. The CIT(A) further failed to appreciate that the assessee having clearly exhibited that staff salary, gratuity, keyman insurance and interest-others are expended as part of the OTA unit and do not pertain to the EOU unit, ought to have upheld the claim of assessee u/s.10B and the powers of CIT(A) being co-terminus with that of the officer, was not justified in refusing to adjudicate this issue raised in appeal.

The quantum of expenses under dispute by assessee is as under: -

No.	Nature of Expenses	Amount (Rs.)
1.	Staff Salary	15,45,641/-
2.	Staff Gratuity	18,22,570/-
3.	Keyman Insurance	29,01,461/-
4.	Interest-others	21,39,163/-
	Total	84,08,835

The grievance of the assessee is that these expenditures have been allocated to eligible Export Oriented Units (EOU) whereas these belongs to Domestic Tariff Area Units (DTA). The allocation of expenses has resulted into decrease in the quantum of deduction u/s 10B for the assessee. Having heard rival submissions, these grounds are disposed-off as under.

2.1 Briefly, the assessee was assessed for AY 2009-10 u/s 143(3) on 27.12.2011. The assessee claimed deduction u/s 10B for Export Oriented Units (EOU). The assessee maintained accounts of EOU units and Domestic Tariff Area Units (DTA) separately. The Ld. AO, disturbed the quantum of deduction, inter-alia, by allocating certain common expenditure which were wholly debited by assessee to DTA units and not allocated to EOU units. Out of these expenses totalling to Rs.133.99 Lacs (as detailed in para 5.1 of assessment order dated 27.12.2011), the expenditure has tabulated in para-1 for Rs.84.08 Lacs has been disputed

by the assessee before us. The Ld. AO allocated expenditure of Rs.108.71 Lacs to DTA units and reduced the deduction accordingly. After making various other adjustments, the deduction of Rs.319.32 Lacs as claimed by the assessee was reduced to Rs.200.40 Lacs. The assessee assailed the reduction of deduction before Ld. CIT(A) and raised ground No.2. The Ld. CIT(A), considering first appellate order for AY 2008-09, upheld the computation of Ld. AO and dismissed the ground raised by the assessee. This order was passed on 26.11.2013.

2.2 The first appellate orders for AYs 2008-09 & 2009-10 were subject matter of appeal by assessee before this Tribunal vide ITA No.311 & 312/Mds/2014 dated 31.10.2014. By way of Ground No.1(A) for AY 2009-10, the assessee assailed the apportionment of expenditure between 10B and non-10B units. The assessee's appeal was partly allowed and the matter was restored back to Ld. AO. Pursuant to the same, another assessment was framed by Ld. AO vide order dated 28.01.2016 wherein the deduction was reduced from Rs.200.40 Lacs to Rs.180.52 Lacs. The issue of allocation of common expenditure was not adjudicated in this order. Accordingly, Ld. CIT(A), vide order dated 31.01.2018, dismissed this ground by observing that the assessee did not raise this ground challenging the allocation of common expenses.

2.3 Aggrieved, the assessee challenged the appellate order before Tribunal vide ITA No.861/Chny/2018 which stood disposed-off vide order dated 24.09.2019 wherein the action of Ld. CIT(A) was confirmed. Against this order, the assessee preferred misc. application MA No.306/Chny/2019 which stood disposed-off vide order dated 22.07.2022. The bench agreed with the submissions of Ld. AR and noted the directions given in para-10 of Tribunal order dated 31.10.2014.

Finally, the order was recalled for limited purpose of adduction of ground nos. 2 and 7. Consequently, this appeal has been placed before us for adjudication of ground nos. 2 & 7 and we proceed to deal with the same as per the aforesaid directions.

3. It is admitted position before us that the issue of allocation of common expenditure as tabulated above has not been dealt with by lower authorities in second round and no adjudication has been rendered therein. The Ld. AR submitted that the matter may be remanded back to Ld. CIT(A) for adjudication. Concurring with the same, we restore ground nos. 2 & 7 relating to allocation of common expenditure as tabulated in para-1 to the file of Ld. CIT(A) for fresh adjudication. The assessee is directed to substantiate its stand. These grounds stand allowed for statistical purposes.

4. The appeal stand allowed for statistical purposes.

Order pronounced on 05th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 05-09-2022

JPV

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF