

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **3390 & 3391/CHNY/2019**

निर्धारण वर्ष/Assessment Years: 2005-06 & 2013 - 14

Coromandel Sugars Ltd.,
No.93, Santhome High Road,
R.A. Puram,
Chennai – 600 028.

The DCIT,
vs. Corporate Circle -1(2),
Chennai.

PAN: AAACI 2702G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 02.11.2022

घोषणा की तारीख/Date of Pronouncement

: 16.11.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-4(i/c), Chennai in ITA Nos.434 & 433/16-17/CIT(A)-4/AYs 2005-06 & 2013-14 dated 09.09.2019. The assessments were framed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') by the ACIT, Company Circle II(3), Chennai for the assessment year 2005-06

vide order dated 17.12.2017 and by the DCIT, Corporate Circle I(2), Chennai for the assessment year 2013-14 vide order dated 29.03.2016.

ITA 3390/Chny/2019

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by the AO in making addition on account of buffer stock subsidy at Rs.1,26,51,000/- has to be accounted as per mercantile system of accounting. For this, assessee has raised various grounds which are argumentative and exhaustive and hence, need not to be reproduced.

3. Brief facts are that the AO during the course of assessment proceedings noticed from the notes of accounts, Point No.4 that the assessee company has not recognized income for an amount of Rs.1,26,51,000/- for the previous year 2004-05 relevant to this assessment year 2005-06. The assessee contended that this income on account of buffer stock subsidy would be accounted on realization or on substantial confirmation from the Government of TamilNadu. The assessee filed reply before the AO as under:-

“As you may be aware the sugar industry is entitled for certain incentives from Government of India towards holding buffer stock as per Sugar

Development Fund (SDF) rules of the Government of India. Though the subsidy is receivable by the company as per the said rules, there was considerable uncertainties both in determination of entitlement and payment of such subsidies to the eligible sugar manufacturers. In order to give true and fair view of the financial statement the company has switched over accruing such buffer stock subsidy (hitherto followed) to account for such subsidies on actual receipt/substantial confirmation from the Government. This being the first year of such method of accounting, the same has been mentioned in the notes forming part of the accounts. We confirm that this change in method of accounting is consistently followed thereafter in all subsequent years”

The AO was not convinced and stated that the explanation of the assessee cannot be accepted for the reason that the method followed by assessee for accounting of its income is on the basis of mercantile system of accounting and hence, the same is to be assessed in this year. He also noted that the assessee has recognized buffer stock subsidy as revenue item in the earlier previous years on accrual basis. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO by stating that the item of income earned by the assessee on account of buffer stock subsidy has accrued during the year and has to be assessed as income during the year only. He noted that the explanation given by the assessee that there are occasions where the subsidy is getting reduced at the time of settlement and it is not certain, he

stated that this cannot be a reason or ground to allow the change in method of accounting regularly employed by the assessee and not accounting the income. Aggrieved, assessee came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstance of the case. The assessee is a sugar manufacturer and entitled for subsidies from Government of TamilNadu towards maintenance of buffer stock as per rules laid down by the Government. In the earlier years, the company used to accrue such entitles towards subsidy as per Government of India norms whereas, at the time of settlement of claims by the Government, there used to be difference and result in some reduction in the subsidy entitlement and further, the Government takes inordinate time to settle these claims of the sugar manufacturers in one pretext or the other. The assessee's counsel before us explained that though the company followed the practice of accrual of such subsidy entitlement during the earlier previous years but now, in the previous year 2004-05 relevant to assessment year 2005-06, the assessee changed its method of accounting in regard to buffer stock subsidy and has recognized the income under this head on receipt basis or on confirmation from the Government. The Id.counsel for

the assessee referred to the note contained in financial statement and placed before the AO and that is again reproduced by us at para 3 above. The Id.counsel for the assessee before us argued that the Accounting Standard AS-12 issued by ICAI has recognized how to account for the Government grants vide clause 6. The Id.counsel for the assessee referred to the following:-

6.1 Government grants available to the enterprise are considered for inclusion in accounts:

- (i) where there is reasonable assurance that the enterprise will comply with the conditions attached to them; and.-
- (ii) where such benefits have been earned by the enterprise and it is reasonably certain that the ultimate collection will be made. Mere receipt of a grant is not necessarily a conclusive evidence that conditions attaching to the grant have been or will be fulfilled.

6.2 An appropriate amount in respect of such earned benefits, estimated on a prudent basis, is credited to income for the year even though the actual amount of such benefits may be finally settled and received after the end of the relevant accounting period.

6.3 A contingency related to a government grant, arising after the grant has been recognised, is treated in accordance with Accounting Standard (AS) 4, Contingencies and Events Occurring After the Balance Sheet Date.

6.4 In certain circumstances, a government grant is awarded for the purpose of giving immediate financial support to an enterprise rather than as an incentive to undertake specific expenditure. Such grants may be confined to an individual enterprise and may not be available to a whole class of enterprises. These circumstances may warrant taking the grant to income in the period in which the enterprise qualifies to receive it, as an extraordinary item if appropriate (see Accounting Standard (AS) 5, Prior Period and Extraordinary Items and Changes in Accounting Policies).

6.5 Government grants may become receivable by an enterprise as compensation for expenses or losses incurred in a previous accounting period. Such a grant is recognised in the income statement of the period in which it becomes receivable, as an extraordinary item if appropriate (see Accounting Standard (AS) 5, Prior Period and Extraordinary Items and Changes in Accounting Policies).

The Id.counsel for the assessee in view of the above argued that the standard mandate is that there should be reasonable amount of certainty or assurance for recognition of such income from Government grants in the form of buffer stock subsidy and accordingly, the assessee has rightly accounted for the income on receipt basis.

5.1 The Id.Senior DR however relied on the order of AO and that of the CIT(A) and argued that the amount is accrued in earlier years and the same has been disclosed by assessee regularly on accrual basis. He relied on the same case of Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd., (2013) 358 ITR 295 as referred by Id.counsel for the assessee. The Id. Senior DR stated that the Hon'ble Supreme Court in para 27 has considered this issue and noted as under:-

“27. Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having

been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic.”

Hence, he argued that this judgment is actually in favour of Revenue and against assessee.

5.2 In reply, the Id.counsel for the assessee relied on para 21 of the judgment which reads as under:-

“21. In so far as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee.”

He argued that even para 27 talks about an hypothetical income i.e., income of import of goods and when no real income accrues but only has hypothetical income accrued to the assessee. This case will be applicable to the facts of the case but he argued that the Hon’ble Supreme Court has categorically followed the decision of Godhra Electricity Co.Ltd., vs. CIT, (1997) 225 ITR 746, wherein it

is held that *"what has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income taking the probability or improbability of realization in a realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made "no income"*". In view of the above, the Id.counsel stated that the assessee has rightly accounted for the income on reasonable certainty or assurance of recognized income from Government in the form of buffer stock subsidy accordingly. The assessee had changed the method of accounting from accrual to receipt or on substantial certainty but receipt which has not been disturbed by the AO.

5.3 In view of the above given facts, we find that the assessee has gone into the factum of reasonable certainty or assurance for recognizing the income from Government from buffer stock subsidy and changed the method of accounting accordingly from accrual to receipt and which has not been disturbed. Since the assessee has accounted the income based on guidelines, notes issued by ICAI and there is a certainty or assurance from Government to recognize this income, we are of the view that the assessee has rightly changed

the systems and recognized the income accordingly. We accordingly delete the addition and allow this issue of assessee's appeal.

6. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition made by AO by including the interest on term loans for the purpose of evaluation of inventory and making addition of Rs.1,55,30,000/-. For this, assessee has raised various grounds which are argumentative and exhaustive and hence, need not to be reproduced.

7. Brief facts are that the AO noted from the notes to accounts vide Point No.12, that the assessee has not included the interest cost while valuing the inventories for an amount of Rs.1,55,30,000/- and thereby he added the interest cost in the inventories and treated this amount as income of the assessee for the relevant assessment year. Aggrieved, assessee preferred appeal before CIT(A).

8. The CIT(A) noted that as per Accounting Standard-2 issued by ICAI, the other costs which are incurred in bringing the inventories to the present location can be added to the cost and again under cost of purchases, other expenditure which is directly attributable to

the purchase should be taken. According to him, as per AS-11 of ICAI there is no bar of including this interest component in the cost of inventories and the assessee was consistently following this method of valuation in earlier years. Accordingly, he confirmed the action of the AO in not accepting the method adopted by the assessee and making addition of Rs.1,55,30,000/- as under valuation of closing stock of inventories. Aggrieved, assessee preferred appeal before the Tribunal.

9. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee in its notes to accounts as excluded the cost of interest for the purpose of valuation of inventories by noting as under:-

“Till last year, for the purpose of valuation of inventories, cost included interest on term loans. However, during the year, the same has not been considered for the purpose of arriving at the cost for valuing inventories, which is in line with the Accounting Standard 2 issued by the Institute of Chartered Accountants of India. Due to this reason, the profit for the year is understated by Rs. 155.30 lakhs and accordingly closing inventories are understated by similar amount.”

Now before us, the Id.counsel for the assessee filed copies of Accounting Standard 2 issued by ICAI for the purpose of valuation of inventories and he referred to particular clause 12, which reads as under:-

“12. Interest and other borrowing costs are usually considered as not relating to bringing the inventories to their present location and condition and are, therefore, usually not included in the cost of inventories.”

As pointed out by Id.counsel for the assessee, this issue is covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. George Oakes Ltd., (2008) 303 ITR 357, wherein Hon'ble High Court has considered the AS-2 issued by ICAI for valuation of inventory and upheld the same by observing as under:-

“4. Heard the counsel. The Institute of Chartered Accountant of India by its Accounting Standard AS 2 (Valuation of Inventory), has prescribed the standard for valuation of inventory. According to this standard, the inventory has to be valued at purchase cost price less commission and discount on purchase (if any) and the commission and discount on purchase in respect of the goods sold should be adjusted against cost of goods sold. Being compulsory the company has adopted the Accounting Standard AS-2 as per the guidelines prescribed by the Institute of Chartered Accountant of India. In this case there is a specific finding that the change in accounting method has not been found to have been made with a mala fide intention. Such a change in method of accounting is bona fide and the same is made mandatory by the Institute of Chartered Accountant of India to be followed in the preparation of financial accounts. Under such circumstances, in the year of change, some discrepancy is bound to happen in the profitability of the company as compared to previous year. However, in succeeding years, there will not be any discrepancy on this account. When the change of accounting method is bona fide and also the same is recognised in accounting principle, the resultant variation in income cannot be forced to be taxed upon the assessee. This Court in the case of Commissioner of Income-tax, Tamil Nadu Vs. Carborandum Universal Ltd., reported in 149 ITR 759, considered the scope of change of method of accounting and held as follows:

"Therefore, in view of the findings of the Tribunal that the change of the method is bona fide and is intended to be followed in future, year after year, the change has to be accepted by the Revenue,

notwithstanding the fact that during the assessment year which is the first year when the change of method is brought about it has resulted in a prejudice or detriment to the Revenue. So long as the method of valuation adopted by the assessee gets recognition from the practicing accountants and the commercial world for valuation of stock-in-trade, the adoption of that method could not be questioned by the Revenue unless the adoption of that method is found to be not bona fide or restricted for a particular year."

We noted that this issue is categorically clear that the ICAI has issued AS-2, Clause II wherein interest and borrowing cost are usually considered as not relating to bringing the inventories to the present location and therefore, usually not included in the cost of inventories. In view of this, we are of the view that the assessee has rightly excluded the same and we delete the addition. This issue of assessee's appeal is allowed.

ITA No.3391/Chny/2019

10. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in restricting the claim of deduction u/s.80IA of the Act at Rs.1,63,85,892/- by considering the sale value of power @Rs.4.44 per unit as against power purchased by public utilities at Rs.5.10 per unit on account of captive power produced and sold by assessee to KPTCL. For this, assessee has raised following grounds:-

2.The Commissioner of Income Tax (Appeals) erred in confirming the restriction of claim made u/s.80IA of Rs 16385892/-

2.1 The Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant has purchased power from public utilities at Rs 5.10 per unit and therefore for the purpose of claim u/s 80IA, has adopted the actual sale value of Rs.4.44 per unit in respect of the power sold to KPTCL and has adopted the market price of Rs. 5.10 per unit, in respect of the power captive consumed.

2.2 The Commissioner of Incometax (Appeals) ought to have appreciated that in respect of power captively consumed, the cost of power consumed should be computed at the rate of which balance power was purchased by that unit, which will represent the market value of power consumed.

11. Brief facts are that the AO during the course of assessment proceedings noted that the assessee company has claimed deduction u/s.80IA of the Act for an amount of Rs.22,19,95,565/-. The AO noted that the sale price per KW in respect of sale of power to KPTCL is taken at Rs.4.44 as on 31.03.2013. He also noted that the purchase price per KW for captive consumption at Rs.5.10 KW. The AO after considering the provisions of section 80A(6) of the Act and 80IA(8) of the Act, restricted the rate of sale at Rs.4.44 and computed disallowance of excess claim of 80IA at Rs.1,63,85,892/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO by observing in para 11.1 as under:-

"11.1 I have considered the submissions of the AR and the order for the assessment year 2011-12. In the said order, the rate at which the power was purchased from State Electricity Board should be adopted. The rate of Rs. 5.10 adopted by the appellant is not the rate at which the State Electricity Board sells the power but it was the rate at which the appellant claims to have purchased from public utilities. Therefore the order of the earlier year may not help the appellant especially when the appellant was not able to adduce any evidence to show that the State Electricity Board also sells the power at Rs.5.10. The further point to be considered in this appeal is the fact noted by the AO in that when enough power generated by the appellant's own power plant for its captive consumption then why sell the power to other entity and that too at a lesser rate. All things considered, I am of the view that the AO was justified in restricting the deduction claimed u/s 80IA and the disallowance of Rs.1,63,85,892/- made is confirmed and the ground raised is dismissed."

12. At the outset, the Id.counsel before us filed copy of order of Tribunal in the case of The India Cements Ltd., in ITA No.737/Chny/2018, order dated 18.08.2021, wherein the Tribunal after considering elaborately directed the AO to compute the value of captively consumed power at the rate sold in open market to the consumer by the State Electricity Boards. For this, the Tribunal has observed as under:-

18.5 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2011-12 in ITA No.2412/Chny/2019 dated 12.12.2019, where the Tribunal under identical set of facts by following certain judicial precedents including the decision of Hon'ble Bombay High Court in the case of Reliance Industries Ltd., and the decision of Hon'ble Chhattisgarh High Court in the case of M/s.Godavari Power and Ispat Ltd., *supra* held that while computing deduction u/s.80IA for generation of power for captive consumption, the rate at which electricity board supply power to its

consumers should be considered instead of the rate at which the power generating companies supply its power to the electricity board. The relevant findings of the Tribunal are as under:-

“31. We have considered the rival submission and perused the materials available on record.

32. A perusal of the facts in the present case clearly shows that the assessee has been captively consuming the electricity generated from its wind mill as also the Heat Waste Recovery Treatment Plant. Admittedly, the assessee is entitled to the deduction u/s.80IA of the Act in respect of the electricity generated and consumed. This is not in dispute. The dispute has arisen for computing the deduction u/s.80IA of the Act. The issue admittedly is covered by the decision of the Co-ordinate Bench of this Tribunal in the case of Sri Velayudhaswamy Spinning Mills Vs Deputy Commissioner of Income Tax referred to supra and as also the decision in the case of Eveready Spinning Mills vs. Assistant Commissioner of Income Tax referred to supra. A similar view has also been taken in the case of M/s. Saranya Textiles vs. The Assistant Commissioner of Income Tax, wherein one of us is a party. This view of ours is also supported by the decision of the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax vs. Gujarat Alkalies Chemicals Limited reported in 395 ITR 247(Guj.), wherein it has been held that the deduction u/s.80IA was allowable to the for generation of power for captive consumption and that the rate of power generation at which the electricity board supplied power to its consumers rather than the rate at which the power generating companies supply its power to the electricity board was to be taken as the price. Further, this view has been supported by the decision of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs. Reliance Industries Limited in I.T.A. No.1056/Chny/2016 dated 0.01.2019 and as also the decision of the Hon'ble Chhattisgarh High Court in the case of Godavari power and Ispat Limited reported in [2014] 42 Taxman.com 551 (Chhattisgarh). As it is noticed that the learned CIT(A) has followed judicial discipline by following the decision of this Tribunal in the case of Sri Velayudhaswamy Spinning Mills Vs Deputy Commissioner of Income Tax and Eveready Spinning Mills vs. Assistant Commissioner of Income Tax referred to supra, as it is noticed this view has also been approved by the Hon'ble High Courts referred to supra, we find no error in the order of the learned

CIT(A) which calls for any interference. It may be mentioned here that the deduction u/s.80IA is the deduction from the total income of the assessee the profits and gains of an eligible undertakings. The Hon'ble Gujarat High Court has categorically admitted that the deduction u/s.80IA is permissible for captive consumption and even the rate at which the deduction is to be computed. Consequently, the issue is held in favour of the assessee and against the Revenue."

18.6 In the present case, the facts are identical with that of the facts considered by the Tribunal in earlier year. The CIT(A) after considering relevant facts and also by following the decision of the ITAT, Chennai in the case of Eveready Spinning Mills (P) Ltd., vs. ACIT, (2012) 17 taxmann.com 254 and the decision in the case of Shri Velayudhaswamy Spinning Mills (P) Ltd., vs. DCIT, (2012) 19 taxmann.com 28 has deleted additions made by the AO by holding that market value of the power captively consumed should be computed considering the rate of power to a consumer in the open market and it should not be compared with the rate of power at which power could have been sold to SEBs because this is not the rate for which a consumer could have purchased power in the open market. Therefore, we are of the considered view that there is no error in the finding recorded by the Id.CIT(A) to delete additions made by the AO towards TP adjustment on deduction claimed u/s.80IA of the Act. Hence, we reject the ground taken by the Revenue.

12.1 As the issue is covered, respectively following the Co-ordinate Bench decision in the case of The India Cements Ltd., *supra*, we direct the AO to allow the claim of deduction u/s.80IA of the Act fully. This issue of assessee's appeal is allowed.

13. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of expenses relatable to exempt income by invoking the provisions

of section 14A r.w.rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules') for an amount of Rs.20.26 lakhs.

14. We have heard rival contentions and gone through facts and circumstances of the case. We noted from the assessment order that the AO has made disallowance of interest under Rule 8D(2)(ii) of the Rules at Rs.55,31,815/- and under clause (iii) of Rule 8D(2) i.e., administrative expenses equal to 1½% to average value of investment amounting to Rs.15,65,875/- thereby the AO disallowed total sum of Rs.70,97,690/-. The CIT(A) restricted the disallowance to the extent of exempt income claimed by the assessee i.e., dividend income of Rs.20.26 lakhs and balance was deleted by observing as under:-

“13.1.I have considered the submissions of the AR. The borrowed funds and the appellant's own funds are mixed and therefore it cannot be accepted that the appellant's own funds were only invested in the shares. Further, as per the decision of the Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT (402 ITR 540), even if the investments are strategic investments, the provisions of section 14A would be applicable. I therefore hold the AO was justified in invoking the provisions of section 14A in the appellant's case. However, I find that there are decisions of the various courts and decisions of the ITAT Chennai Bench following such decisions wherein it was held that the disallowance u/s 14A should not exceed the dividend income. In fact this view was also confirmed in the above decision of the Supreme Court. I therefore restrict the disallowance u/s 14A to the extent of dividend income of Rs. 20,26,000/- and the balance disallowance made by the AO is deleted. Thus addition to the extent of Rs. 20,26,000/- is

sustained and the balance sum of Rs. 50,71,690/- is deleted. The appellant gets partial relief in this regard. This ground is therefore partly allowed.

We noted that the CIT(A) has restricted the disallowance to the extent of dividend income i.e., claimed by assessee as exempt and rest of the disallowance, he restricted because the investments were strategic in nature, which issue is covered by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT, (2018) 402 ITR 640. We find no infirmity in the order of CIT(A) and the same is confirmed. This issue of assessee's appeal is dismissed.

15. In the result, the appeals filed by the assessee in ITA No.3390/Chny/2019 is allowed and ITA No.3391/Chny/2019 is partly allowed.

Order pronounced in the open court on 16th November, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT