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

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1259/Del./2017
(ASSESSMENT YEAR : 2012-13)

ITA No.7745/Del./2017
(ASSESSMENT YEAR : 2013-14)

M/s. Havells India Limited, 904, 9th Floor, Surya Kiran Building, K.G. Marg, Connaught Place, New Delhi – 110 001.	vs.	DCIT, Large Tax Payer Unit, New Delhi.
(PAN : AAACH0351E)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Rohit Jain, Advocate
Ms. Deepashree Rao, CA
Ms. Shivangi Jain, CA
REVENUE BY : Shri Mrinal Kumar Das, Senior DR

Date of Hearing : 28.07.2022 & 23.11.2022
Date of Order : 23.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These are appeals by the assessee against the respective orders of the ld. CIT (Appeals)-44, New Delhi pertaining to assessment years 2012-13 & 2013-14.

2. Since the issues are common and connected the appeals were heard together and these are consolidated for the sake of convenience.

3. For the sake of reference, we are referring to grounds of appeal for AY 2012-13 which read as under :-

> "1.01 That the impugned order of CIT (A)-44, New Delhi is bad in law and wrong on the facts and in the circumstances of the case and legal position.
>
> 2.01 That on the facts and in the circumstances of the case and the legal position, the learned CIT (A) has erred in confirming the additions of Rs.3,80,00,000/- to the appellant's income on account of the alleged difference in arm's length price of international transactions undertaken by the appellant on the basis of finding in the order passed by the Transfer Pricing Officer ('TPO') under section 92CA(3) of the Act.
>
> 2.02 That on the facts and in the circumstances of the case and the legal position, the learned CIT (A) has erred in confirming an addition of Rs.3,80,00,000/- allegedly on the ground that no commission has been charged by the appellant for providing corporate guarantee to the lenders on behalf of its associated enterprises.
>
> 2.03 That on the facts and in the circumstances of the case and the legal position, the learned CIT(A) has erred in arriving at the arm's length price of service provided by the appellant in the form of corporate guarantee to AEs; whereas:-
>
> i) Providing corporate guarantee is in the nature of shareholders' activities and is not an 'international transaction' as investment in subsidiary Company is not an 'international transaction' as held in the case of Vodafone India Services Private Limited and Shell India Markets Private Limited.
>
> ii) The appellant has not incurred any cost for issuing corporate guarantee and such transaction has no bearing on the profits, income, losses or assets of the appellant and it cannot be considered as an 'international transaction' in terms of section 92B of the Act.
>
> iii) The corporate guarantee issued by the appellant was purely on the commercial consideration with anticipation of

significant benefit in the form of profit income in the later years and to protect the interest of the appellant Company.

iv) The providing bank guarantee and corporate guarantee are different and distinct matters and cannot be compared with.

3.01 That on the facts and in the circumstances of the case and the legal position, the learned CIT (A) has erred in confirming the disallowance of Rs.3,89,27,433/- in respect of provision made for sales incentive under "Shahenshah Scheme" and holding that the provision made by the appellant under the aforesaid scheme was not being made on a scientific or logical basis and therefore the provision, is not allowable as deduction.

4.01 That on the facts and in the circumstances of the case and the legal position, the learned CIT (A) has erred in confirming the reduction of the deduction allowable u/s 80IC of the Act in respect of the units at Baddi-I and Haridwar-I, to the extent of Rs.11,33,863/-, by excluding interest income earned by the said units, while computing the eligible profits.

4.02 That on the facts and circumstances of the case, the learned CIT(A) has erred in alleging that the appellant has not substantiated the claim of Rs.15,41,152/- received by the units eligible under section 80IC of the IT Act, 1961.

5.01 That on the facts and in the circumstances of the case and the legal position, the learned CIT (A) has erred in not allowing the deduction of education cess and secondary and higher education cess of Rs.2,06,02,623/-."

4. Brief facts of the case are that the assessee is engaged in the business of manufacturing and selling of electric equipments and power distribution products such as building circuit protection, industrial and domestic switchgear, cables and wires energy meters, fans CFL Lamps etc. During the year, the assessee has entered into following international transactions with the AE reproduced as under:-

S. No.	International Transaction	Amount in Rs.
1	Export of Finished Goods to AE	45,62,75,037
2	Import of lighting fixture and fans	18,05,05,332
3	Import of raw material	3,06,30,354
4	Purchased of fixed assets	1,32,23,434
5	Provision of Support services	24,94,050
6	Corporate guarantee given	1,95,92,93,950
7	Reimbursement of Expenses by AEs	1,03,04,458
8	Reimbursement of Expenses to AEs	6,87,087

5. The assessee in its TP study has benchmarked CFL and switchgear sales and business support services treating them as a separate business segment and by using TNMM as the most appropriate method and OP/OC is taken as PLI. For both the segments, PLI of the assessee exceeded average PLI of the comparables, therefore, the assessee concluded that the international transaction is at ALP.

6. Apropos issue of Corporate Guarantee Charges : The TPO in this case treated corporate guarantee as an international transaction in view of amendment made u/s 92B. He determined arm's length price of providing corporate guarantee @ 1.15% of Rs.193.98 crores being the balance

amount of loan outstanding as on 31.03.2012 based upon data collected from State Bank of India under section 133 (6) of the Act.

7. Upon assessee's appeal, ld. CIT (A) rejected the assessee's contention and confirmed the addition made by the AO.

8. Against the above order, the assessee is in appeal before us.

9. We have heard both the parties and perused the record.

10. Ld. counsel of the assessee made elaborate written submissions for the proposition that the issue of guarantee is pursuant to the obligation of the assessee and not at the behest of Associated Enterprises (AEs). Hence no charges for the same are to be attributed. Another proposition made is that no notional income can be imputed u/s 92. Without prejudice, it is submitted that vide Finance Act, 1992, Explanation to Section 92B was inserted to clarify that international transactions include inter alia "capital financing including any type of long term or short term borrowing, lending or guarantee, purchase or sale of marketable securities……..or any other debt arising during the course of business". Ld. counsel contended that same amendment does not apply to assessee's case. However, in all fairness, he submitted that corporate guarantee issue is covered partly in favour of the assessee in assessee's own case by the Delhi Bench of the ITAT for the AY 2014-15 in ITA

No.6509/Del/2018 vide order dated 09.05.2022 wherein it is held as under:-

> "6. At the outset, the ld. AR argued that providing corporate guarantee is in the nature of shareholders activities and is not an 'international transaction' as investment in subsidiary company is not an 'international transaction' as held in the case of Vodafone India Services Pvt. Ltd. and Shell India Markets Pvt. Ltd. It was argued that the assessee has not incurred any cost for issuing corporate guarantee and such transaction has no bearing on the profits, income, losses or assets of the assessee and it cannot be considered as an 'international transaction' in terms of Section 92B of the Act. It was further argued that the corporate guarantee issued by the assessee was purely on the commercial consideration with anticipation of significant benefit in the form of profit income in the later years and to protect the interest of the assessee company. It was argued that the bank guarantee and corporate guarantee are different and distinct matters and cannot be compared with.
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> 7. The ld. DR argued that Hon'ble Madras high court's latest decision in Redington India Pvt. Ltd., Vs. DCIT, Tax Appeal No.590 and 591 of 2019, dt.10- 12-2020 has settled the law that a corporate guarantee indeed forms an international transaction. Relying on the order of the TPO, the ld. DR argued that corporate guarantees given by the assessee is indeed an international transaction amenable to adjustment.
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> 8. Rebutting the argument of the ld. DR, the ld. AR alternatively argued that determination of the corporate guarantee at 1.3% is on a higher side and relied on the judgment of Hon'ble High Court of Bombay in the case of C IT Vs. Everest Kento Cylinders Ltd . 58 Taxmann 254 and also on the judgment of Hon'ble High Court of Bombay in the case of CIT Vs Thomas Cook (India) Ltd. in ITA No. 712 of 2017 order dated 26.08.2019. Keeping in view, the judgments of the Hon'ble Bombay High Court and in the absence of any other judgment contrarily brought to our notice, we hereby direct that the adjustment in respect of corporate guarantee provided

> to AEs be determined at date of 0.5% instead of 1.3% determined by the revenue."

11. Upon careful consideration, we are of the considered opinion that since ITAT has decided the issue in assessee's own case as above and the same has not been reversed by Hon'ble jurisdictional High Court, we follow the same and direct that disallowance be restricted to 0.5% as has been held in the above order of the ITAT.

12. Apropos Ground No.3 of disallowance in respect of provision made for sales incentive under Shahenshah Scheme : On this issue, AO following the CIT(A) order in assessee's case for AY 2008-09 held that the payment of Rs.7,61,96,186/- made under this scheme during the year and amount of excess provisions of Rs.8,70,954/- are allowed and the difference of Rs.3,89,27,433/- i.e. [{Rs.11,59,94,573/- - Rs.7,61,96,186/-(8,70,954)}] is disallowed and added to total income.

13. Upon assessee's appeal, ld. CIT (A) relied upon its orders for AYs 2008-09 & 2009-10 and confirmed the disallowance made by the AO.

14. Against the above order, the assessee is in appeal before us.

15. We have heard both the parties and perused the record. Ld. counsel of the assessee submitted that this issue has been consistently decided by

the ITAT in assessee's favour by holding that the provisions are to be allowed in AYs 2006-07, 2007-08, 2008-09 & 2009-10 and AY 2014-15.

16. Upon hearing both the parties, we find that the issue is decided by the ITAT in assessee's own case in assessee's favour consistently, hence we follow the same and are of the opinion that the provisions made in this regard are allowable. We may gainfully refer to the order of ITAT for AY 2014-15 (supra) which reads as under :-

> "20. We have heard the rival submissions and perused all the materials available on record. The issue in the present ground is with respect to the disallowance of pro vision made with respect to the sales incentive payable under "Shahenshah Scheme". The AO had disallowed the provision by holding that the provision made by the assessee was not based on any scientific method and there is an element of contingent liability and therefore the sum is not allowable. We find that identical issue arose in assessee's own case in AY 2006- 07, 2007-08 and 2008-09 before the co-ordinate Bench of Tribunal. The Co-ordinate Bench of Tribunal in earlier years has decided the issue in favour of the assessee by holding that the pro vision made by the assessee in respect to "Shahenshah Scheme" to be on scientific basis. Before us, no material has been placed by the Revenue to point out any ITA No.6194/Del/2015 ITA No.463/ Del /2016 M/s. Havells India Ltd. vs DCIT A.Y. 2009- 10 14 distinguishing feature in the facts of the case in the year under consideration and that of earlier years. Further Revenue has also not placed any material to demonstrate that the decision of the Tribunal in assessee's own case in A.Y.2006-07, 2007- 08, 2008- 09 has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the order of the Co-ordinate bench in the assessee's own case and for similar reasons, we hold that the Revenue w as not justified in making the addition. We therefore set aside the action of AO. Thus the g round of the assessee is allowed."

17. Respectfully following the aforesaid precedent in assessee's own case, we direct that the disallowance in this regard is to be deleted.

18. Apropos ground no.4 of issue of deduction/rejection allowable u/s 80IC : On this issue, AO noted that in the preceding year, the assessee was disallowed section 80IC deduction on interest income and held the same was not allowable in this year also.

19. Upon assessee's appeal, ld. CIT (A) confirmed the disallowance made by the AO by holding as under:-

> *"Facts are similar compared to FY 2008-09 where in ITA No.20/10-11/CIT(A)/LTU while passing the appeal order I have confirmed the action of the assessing officer to exclude the interest for computing deduction u/s 80IC. My findings for AY 2009-10 are reproduced as under:-*
>
> > *I have considered the assessment order, written submission and oral arguments of the Ld. AR. On primafacie basis interest receipt from FDR are in the nature of income from other sources. The appellant during the assessment proceeding or even during the appellate proceeding has not proved that such FDR are related to business of the undertaking eligible for deduction u/ s 80IC of the Act. Similarly, the Ld AR's argument for netting of is without any basis or working. Accordingly I confirm the addition made by the assessing officer for excluding these interest incomes for the computation of deduction u/ s 80IC of the Act.*
>
> *Ld AR has argued that interest to the extent of 19,02,143/- is on fixed deposit pledged with sales tax department, electricity department and interest received from debtors. Therefore, has claimed that it is inextricably connected with business activity. Ld AR has reproduced the appellant reply dt. 05/01/2016 where it is claimed that interest to the extent of Rs. 19,02,143/- is on account of FDR pledged with electricity department, sales tax department and also debtors against late payments. The assessing officer has considered this reply of the appellant and he was of the view that the appellant has reduced its claim of deduction u/s 80IC by amounting of Rs. 14,04,654/- on account of interest. Therefore, to the extent audit report in form no 10CCB is incorrect. Ld AO pointed out that the assessee has not substantiated the claim of deduction u] s 80IC in respect of interest amounting to Rs.19,02,143/ -. During the*

appellate proceedings, also Ld AR/ appellant has not provided the details of such interest on the FDR pledged with electricity department, sales tax department and also debtors against late payments. In absence of such breakup and particular of such FDR interest relatable to the claim of the assessee that such FDR was pledged with electricity department, sales department and from debtors, cannot be accepted. Accordingly, the action of the assessing officer is hereby concerned. As a result, this ground of appeal is dismissed."

20. Against the above order, the assessee is in appeal before us.

21. We have heard both the parties and perused the record. Ld. counsel of the assessee submitted that entire addition in this regard was deleted by the ITAT in AY 2009-10 and also for AY 2014-15. We note that this Tribunal in assessee's own case for AY 2009-10 has decided the issue in favour of the assessee and concluded as under :-

"26. We have heard the rival submissions and perused all the materials available on record. The issue in the present ground is with respect to the denial of claim of deduction u/s 80IC on the interest income earned by the assessee. Before us it is Learned AR's contention that the interest income earned is inextricably linked to the main business activity of the assessee as it w as earned from fixed deposits which was required to be maintained as per the statutory requirements. The aforesaid contentions of the assessee have not been controverted by the Revenue. We find that the Hon'ble Delhi High Court in the case of PCIT vs. Bharat Sanchar Nigam Ltd. (supra) and the Co-ordinate Bench of Tribunal in the case of M/s. NHPC Ltd. (supra) has held that the Revenue was not justified in denying the claim of deduction on such income. Before us, Revenue has not pointed any contrary binding decision in its support. We therefore, hold that AO not justified in denying the claim of deduction u/s 80IC of the Act and thus direct the AO to g rant deduction u/s 80IC on the interest income earned by the assessee. Thus the ground of the assessee is allowed."

22. Since in assessee's own case the issue is decided in favour of the assessee, we hold that principally the issue is in favour of the assessee. However, the Revenue authorities have also pointed out that assessee has not given necessary breakup and particular of interests mentioned in

CIT's order as above. We remit this issue to the file of the AO to obtain the necessary breakup and follow the ITAT order as above.

23. Apropos ground no.5 of issue of education cess : Ld. counsel of the assessee submitted that he shall not be pressing this ground, hence this ground is dismissed as not pressed.

24. Our above order applies *mutatis mutandis* to the appeal for AY 2013-14.

25. In the result, these appeals are partly allowed.

Order pronounced in the open court on this 25TH day of November, 2022.

SD/-	**SD/-**
(ASTHA CHANDRA)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 25th day of November, 2022
TS & *Shekhar*

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT (A)-44, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.