

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1549/DEL/2019 (A.Y 2013-14)

Murcery Rubber Mills, A-112, Gujranwala Town, Part-1 Delhi PAN: AAAFM8804G (APPELLANT)	Vs.	ACIT Circle 36(1) New Delhi (RESPONDENT)
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Appellant by	Shri G. C. Srivastava, Sr. Adv & Sh. Kalrav Mehrotra, Adv
Respondent by	Shri Amit Shukla, Sr. DR

Date of Hearing	30.11.2022
Date of Pronouncement	06.12.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 18/10/2018 of the Id. Commissioner of Income Tax (Appeals)-12, New Delhi [hereinafter referred to CIT (Appeals)] for Assessment Year 2013-14.

2. The assessee has raised the following substantive grounds of appeal:-

“1. The learned Commissioner of Incometax (appeal) has erred in the law and facts of the case in confirming the disallowance of Rs.21,57,910/-, being the indirect expense.

2. The learned Commissioner of Income tax (appeal)has erred in the law and facts of the case in confirming the disallowance of Rs.96,713/-, treating them as personal expenses.

3. The learned Commissioner of Income tax (appeal) has erred in the law and facts of the case in confirming the disallowance of Rs.54,58,190/-, a deduction claimed under section 80IC of the I.T. Act, 1961

4. The learned Commissioner of Income tax (appeal) has erred in the law and facts of the case in confirming that sales of testing instruments, misc. sale and Job work ought to be excluded for the purpose of section 80IC of the I.T Act, 1961.

5. Any other ground which 'the appellatant may take with the kind permission of the Hon'ble Tribunal.”

3. Brief facts of the case are that, the assessee has filed return declaring gross total income of Rs. 54,58,190/- after claiming deduction u/s 80IC of the Act of Rs. 46,27,587/- for the Assessment Year 2013-14. The assessment proceedings have been initiated against the assessee and the assessment order came to be passed on 30/03/2016. The Ld. A.O. has computed the income of the assessee as under:-

Consolidated Net Profit as declared by the assessee Rs. 1,00,85,776/-

Unit-1-Rasoi Unit

Net Income declared by the assessee		Rs.54,58,187/-
Add (i) Addition as per Para 3 discussed above		Rs. 21,57,910/-
(ii) Addition as per Para 4 discussed above		Rs. <u>96,713/-</u>
		Rs. <u>22,54,623/-</u>
<u>Net Income from Unit-1</u>		<u>Rs. 77,12,810/-</u>

Unit-II-Moginand Unit

Net profit as per profit and loss account		<u>Rs. 46,27,589/-</u>
Less: Income from Miscellaneous Sales	(-)	Rs. 91,775
Total Income		Rs. 1,22,48,624/-
Add: Disallowance on above Para 6		Rs. 36,500/-
Add: Income from Miscellaneous Sales		Rs. 91,775/-
Less: Deduction u/s 80IC		Rs. NIL
Total taxable Income		Rs. 1,23,76,899/-
Rounded Off to		Rs. 1,23,76,900/-

4. As against the assessment order dated 30/03/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 18/10/2018, confirmed the disallowance of Rs. 21,57,910/- being the direct expenses, confirmed the disallowance of Rs. 96,713/- treating them as personal expenses, further confirmed the disallowance of Rs. 54,58,190/- which was claimed u/s 80IC of the Act and also not excluded a sum of Rs. 91,775/- for the purpose of 80IC of the Act.

5. Aggrieved by the order of the Ld.CIT (A) dated 18/10/2018, the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee submitted that the assessee does not want to press the Ground No. 2, therefore, the Ground No. 2 is dismissed, not pressed.

7. Ground No. 1:

Ground No. 1 is regarding confirming disallowance of Rs. 21,57,910/-. The assessee during the year under consideration has claimed direct expenses to the tune of 7.13% of the total sales whereas in the Moghinand Unit of the assessee direct expenses comprises of 6.06% of total sales of Rs. 12,91,37,671/-. The assessee shall show caused as to why the excessive in direct expenses exceeding 1.07% not be disallowed and added back to the income. If the case that of the assessee is that the assessee cannot diver these expenses from unit to other unit. Further claimed that the expenses incurred at both the units or other unit which are unique to those units only and have been claimed properly. The Ld. A.O after considering the clarification of the assessee has tabulated the expenses of each unit as under:-

S.no.	Nature of Expenses	Expense of Rasoi Unit (In Rs.)	Expenses at Moginand Unit (In Rs.)
1	Salary	1548619	NIL
2	Telecom Expenses	416825	6476
3	Travelling Expenses	478247	NIL
4	Building Repair & Maintenance	59991	NIL
5	Ex Gratia	222585	NIL
6	Wages	1368561	621751
	Total Expenses	4149828	628227

3.1 These expenses should be divide proportionately in both the units and not claimed wholly in Unit-1. Moreover, if the assessee's contention is accepted in overall, as regards to the indirect expense incurred at Rasoi Unit, as compared to the Moginand Unit, the ratio of indirect expenses against the total turn-over of Rasoi Unit comes to 7.13%, which is still higher by 1.07% as compared to the indirect expenses of 6.06% against the total turn-over at Moginand Unit. In view of the above, it is clear that the expenses of Mogiland unit are being diverted to the Rasoi Unit to claim the higher amount of deduction u/s 80IC by the Moginand Unit.

3.2 To avoid the possible leakage in trading results declared by the assessee and to be more reasonable, the above mentioned expenses of Rs.41,49,828/- are being allocated to both the units proportionate to their profit and therefore, Rs.21,57,910/- is being added back to the indirect expenses of Moghinand Unit, thereby reducing the profitability to Rs.24,69,679/- (Rs.46,27,589 - Rs.21,57,910). Accordingly, an addition of Rs.21,57,910/- is made in the trading results declared by the assessee in respect of Rasoi Unit. Since the assessee has furnished inaccurate particulars of its income, penalty proceedings u/s 271(l)(c) are being , initiated separately. (Addition Rs.21,57,910/-)

8. The Ld. A.O was of the opinion that the expenses should be divided proportionately in both the units and should not have claimed wholly in one unit. Therefore, the Ld. A.O. was of the opinion that to avoid possible leakage in trading results declared by the assessee and to be more reasonable, the said expense of Rs. 41,49,828/- are being located in both the units proportionately their profit and therefore Rs. 21,57,910/- is being added back to the direct expenses of the Moghinand Unit thereby reduced the profitably to Rs. 24,69,679/-, accordingly, an addition of Rs. 21,57,910/- has been made in the trading results declared by the assessee in respect of Rasoi Unit.

9. As against the above findings in the Assessment Order, the Assessee has filed an Appeal before the CIT (A) and urged the following grounds:

“The assessment is bad in laws and on facts. It is against the principles of natural justice as everything has been done without going into the facts and details of the case.”

The Ld.CIT(A) while adjudicating the said ground observed on the said as under :

“8.1. The appellant has furnished written arguments in respect of the addition amounting to Rs. 21,57,910/- made by the Assessing Officer but the ground of appeal has been taken to oppose this addition. Therefore, the written arguments submitted in this respect are ignored.”

10. In our opinion the above Ground No. 1 is co-related with regard to granting deduction u/s. 80IC of the Act. This issue is also required to be reconsidered by the A.O. along with the ground relating to granting of deduction under section 80IC of the Act. In view of the same, we remit the above issue involved in Ground No.1 to the file of the A.O. for fresh consideration.

11. Ground No. 3 is regarding confirming the disallowance of Rs. 54,58,190/- a deduction claimed u/s 80IC of the Act. The very same issue claim for consideration by the Co-ordinate Bench in ITA No. 1733 & 1734/Del/2017 in the Assessee's own case for the Assessment Year 2011-12 and 2012-13 wherein it is held as under:-

“8. Coming to the 1st ground relating to the disallowance of the claim of the assessee preferred under section 80 1C of the Act is concerned, Ld. DR fairly conceded that the issue was decided in favour of the assessee in the earlier assessment years by the Tribunal and the same remains undisturbed as of now. From the orders of the authorities below it is amply clear that the facts relating to this issue are fairly identical for the assessment year 2009-10 and 2010-11 also and therefore, in the absence of any compelling change in facts and circumstances, we find it difficult to

deviate from the view taken by the coordinate Bench. We therefore, while respectfully following the same allow ground No.1 of the assessee's appeal for both the years.

12. By respectfully following the order of the Co-ordinate Bench we allow the Ground No. 3 for the year under consideration.

13. In Ground No. 4, the assessee is aggrieved in confirming that sales of testing instruments, miscellaneous sales and job work of Rs. 91,775/- and as per the assessee, the same should be deducted for the purpose of Section 80IC of the Act. The similar issue has also been considered in Assessee's own case for the Assessment Year 2011-12 & 2012-13 (supra) wherein the Co-ordinate Bench of this Tribunal has held as under:-

“9. Now coming to Ground No. 2 as could be seen from the order of the Ld. Assessing Officer it relates to the claim of the assessee under Section 80IC in respect of the job work, miscellaneous sales and sales of testing instruments relating to the Moghinand Unit. According to the Ld. AR, whether or not the assessee manufactures the conveyor belt for themselves or for other units, the nature of the process remains the same. He placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Sadhuforging Ltd In ITA Nos. 167 and 351/2011 for the Assessment Year 2004-2005 by order dated 03.06.2011. In respect of the miscellaneous sales, Ld. AR submits that it is in respect of the sale of scrap, but it involves the sale/development of software for the customers to whom they have supplied the instruments. Ld. AR. submits that the machines are computerized and the, software id required for communication between the machines and the computer, the

software is usually a standard practice that would be supplied to the customer, but at times the customer required some additional features which would be developed specifically for them and such development charges are included in the miscellaneous sales. He further submits that there are also some best cuttings during the process, of conveyor belt manufacturing in the form of Kinri and the sales relating to it are also included in the miscellaneous sales While placing reliance on the decision of the Bangalore Bench of the Tribunal in the case of Xalted Information Pvt. Systems Private Limited vs. ITO in ITA No. 821/Bang/2019 for the Assessment Year 2014-2015 and decided on 26.02.2020.

10. *In Sadhu Forging Ltd. (supra), the Hon'ble jurisdictional High Court held that It would be immaterial whether the Assessee is doing the job of forging also for customers and was charging them on job-work basis or on the basis, of labour charges, and It will still be qualified as carrying eligible business under Section 80IB. Relevant observations of the Hon'ble High Court read thus;-*

12. *Thus, in view of above, we have no hesitation in arriving at the conclusion that the activity of forging was "manufacturing" within the ambit of [Section 80IB](#). It was immaterial that the assessee was doing the job of forging also for customers and was charging them on job-work basis or on the basis of labour charges. It will still be qualified as carrying eligible business under [Section 80IB](#). Same is the ratio of the decisions in the cases of (i) [Commissioner of Income Tax v. Metalman Auto \(P\) Ltd.](#), (2011) 52 DTR (P&H) 385; (ii) [Commissioner of Income Tax v. Vallabh Yarns \(P.\) Ltd.](#), (2011) 51 DTR (P&H) 236; (iii) [CIT v. Impel Forge & Allied Industries Ltd.](#), (2010) 326 ITR 27 (P&H), (iv) [CIT v. Rane \(Mad\) Ltd.](#), 238 ITR 377*

(Mad), and (v) [Dy. CIT v. Harjiwandas Juthabhai Zaveri & Another](#), 258 ITR 785 (Gujarat).

13. Keeping in view the activities of the assessee in giving heat treatment for which it had earned labour charges and job-work charges, it can thus be said that the appellant had done a process on the raw material which was nothing but a part and parcel of the manufacturing process of the industrial undertaking. These receipts cannot be said to be independent income of the manufacturing activities of the undertakings of the assessee and thus could not be excluded from the profits and gains derived from the industrial undertaking for the purpose of computing deduction under [Section 80IB](#). These were gains derived from industrial undertakings and so entitled for the purpose of computing deduction under [Section 80IB](#). There cannot be any two opinions that manufacturing activity of the type of material being undertaken by the assessee would also generate scrap in the process of manufacturing. The receipts of sale of scrap being part and parcel of the activity and being proximate thereto would also be within the ambit of gains derived from industrial undertaking for the purpose of computing deducting under [Section 80IB](#).

11. In as much as the provisions under 80IB are in parimateria with Section 80IC, we find that whether the assessee is involved in manufacturing for themselves or doing job work for other units immaterial to be eligible business u/s 80IC.

12. In *Xalted Information Systems Pvt. Ltd.* (Supra) the Bangalore Bench of the Tribunal observed that:-

17. In our opinion, this will not be conclusive to hold that there were two segments or verticals and is contrary to the Agreements under which the Assessee had to perform certain obligations to BSNL in the form of supply of software, hardware, installation and maintenance thereof. As we have already seen, the agreement with ZTE is very clear that the supply of software and hardware necessary to support the software supply, installation & commissioning as well as rendering support services were to be done on a turnkey basis. Though the services agreement is separately entered into by the assessee, it has a direct nexus and connection with the agreement for supply of software. In these circumstances, the decisions cited by the ld. counsel for assessee, clearly supports the case of the assessee. We are therefore of the view that the claim made by the assessee for deduction u/s. 80IC of the Act ought to have been allowed by the AO/CIT(A) and they fell into an error in not allowing the said claim. We therefore hold that the assessee is entitled to claim deduction u/s. 80IC of ITA No. 821/Bang/2019 the Act on service charges of Rs.3,75,22,701.

13. This finding has a bearing on the issue relating to the miscellaneous sales in as much as the contention of the assessee has been that it involves the sale/development of software for the customers to whom they have supplied the instruments. As stated above, Ld. AR submits that the machines are computerised and the software is required for communication between the machine and the: computer, the software is usually a standard practice that would be supplied to the customer, but at times the customer required some additional features which would be developed specifically for them and such development charges are included in the miscellaneous sales. He further submits that there are also some

best cuttings during the process of conveyor belt manufacturing in the form of Kinri and the sales relating to eat are also included in the miscellaneous sales. It requires verification from the end of the Id. Assessing Officer .

14. Lastly, he submits that in respect of the sale of testing instruments, there are material purchased for making these instruments starts from basic items like metal sheets, not and bolts electro computer systems and as is held in the case of Triveni Engineering and Industries Ltd. Vs. CIT in C.A Nos. 13357-13358 of 1996 by order dated 08.08.2000 of the Hon'ble Apex Court, where an activity results in emergence of a new marketable commodity with a distinctive name, character or use, it cannot but be manufacturing process.

15. Basing on this factual and legal position, he submitted that in the order for the assessment years 2009-10 on 2010-11 the Tribunal did not consider the issue on merits and therefore, It requires fresh adjudication. On this score he submitted that, inasmuch as the authorities below did not consider the issue in the light of this legal position with reference to the documentary evidence that will be produced by the assessee in the fitness of things, remitting the issue to the file of the Id. Assessing Officer will serve the ends of justice. Id. DR, though submits that the 2nd ground is covered in favour of Revenue in the order of the Tribunal for the Assessment Year 2009-10 & 2010-11, does not dispute the fact that the issue was not considered on merits with reference to any documents in the light of the law governing the same.

16. *Having regard to the facts and circumstances involved in the adjudication of ground No. 2, and considering the request of the Ld. AR that given an opportunity the assessee would produce all the documentary evidence before the learned Assessing Officer and submit the position of law before him, we deem it just and proper to give an opportunity to the assessee to present the case before the assessing officer on merits by filing the documents and referring to the decisions governing the issue. We, accordingly, set aside the ground NO. 2 to the file of the Ld. Assessing Officer to verify the documents in the light of the submissions made by the assessee and also the decisions relied upon by the assessee and referred t above. Ground No. 2 is accordingly allowed for statistical purpose.”*

14. By respectfully following the Assessee’s own case for Assessment Year 2011-12 & 2012-13 the issue involved in Ground No. 4 is remanded to the file of the A.O. for de-novo consideration as held in the earlier years (supra).

15. In the result, the Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on : 06 .12.2022.

Sd/-

**(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER**

Dated : 06/12/2022

R. N, Sr. PS

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

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ASSISTANT REGISTRAR
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