

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 3126/Del/2018
Asstt. Year: 2014-15

Addl.CIT, Special Range-9, New Delhi.	Vs.	VLCC Personal Care Ltd., M-14, Commercial Complex, Greater Kailash, Part-II, New Delhi – 110 048. PAN AABCV6538Q
(Appellant)		(Respondent)

Assessee by:	Shri Vinod Bindal, CA
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	02/02/2023
Date of pronouncement	17/02/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order dated 30.01.2018 of the Ld. Commissioner of Income Tax (Appeals) – 16, New Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2014-15.

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

- “1. *The Ld. CIT(A) has erred on the facts and circumstances of the case by deleting the addition of Rs. 4,66,791/- made by the AO on account of interest income.*
2. *The Ld. CIT(A) has erred on the facts and circumstances of the case by deleting the addition of Rs. 90,61,424/- made by the AO on account of net gain on foreign currency transactions.*

3. *The Ld. CIT(A) has erred on the facts and circumstances of the case by deleting the addition of Rs. 45,42,389/- made by the AO on account of liabilities written off.*
4. *The Ld. CIT(A) has erred on the facts and circumstances of the case by deleting the addition of Rs. 75,31,391/- made by the AO on provision for doubtful debts written back, doubtful advances written back, security deposits written back and impairment of assets.”*

3. Brief facts are that the assessee company is engaged in the business of maintaining and running beauty, slimming, fitness and health centres at various locations and also provides vocational training at various institutes. For AY 2014-15, the assessee filed its return on 27.11.2014 declaring income of Rs. 2,66,790/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**). The case was selected for scrutiny. Statutory notices were issued and served upon the assessee in response to which submissions / details were filed. The Ld. Assessing Officer (**“AO”**) completed the assessment on 31.12.2016 under section 143(3) of the Act computing total income at Rs. 2,63,03,900/- excluding interest income of Rs. 4,66,791/-; gain from foreign currency transaction of Rs. 90,61,424/-; other non operating income of Rs. 1,22,84,256/-; sale of services of Rs. 50,560/- and other operative revenues of Rs. 41,74,075/- for the purpose of deduction under section 80IC of the Act.

4. On appeal filed by the assessee, the Ld. CIT(A) deleted addition of Rs. 4,66,791/- made by the Ld. AO on account of interest income ; addition of Rs. 90,61,424/- on account of net gain of foreign currency transaction ; addition of Rs. 45,42,389/- on account of liabilities written off and addition of Rs. 75,31,391/- for doubtful debts written back, doubtful advances written back, security deposits written back and impairment of assets.

5. Aggrieved, the Revenue is before the Tribunal challenging the abovementioned deletions made by the Ld. CIT(A) and all the grounds of appeal relate thereto.

6. The Ld. DR supported the order of the Ld. AO. He invited our attention to the written submission dated 05.07.2021 filed before the Tribunal which is reproduced below:

“In the above case, it is humbly submitted that the following submissions may kindly be considered.

1. *The underlying principle with regard to eligibility of deduction under section 80-IC has been elucidated by the Hon’ble Supreme Court in Cambay Electric Supply Industrial Co. Ltd. vs. CIT (1978) 113 ITR 84, where the Court held that the expression “derived from” has to be given a restricted meaning as opposed to the phrase “attributable to” which is wider and broader in scope.*
2. *In CIT vs. Sterling Foods (1999) 237 ITR 579, Hon’ble Apex Court had clearly enunciated that miscellaneous incomes could not be construed to constitute profit and gains derived from the industrial undertaking. This principle was reiterated in CIT vs. Pandian Chemicals (2003) 262 ITR 278*
3. *Hon’ble Madras High Court has held that interest earned on fixed deposits is not eligible for deduction under section 10B in the case of CIT vs Madras Motors 257 ITR 60.*
4. *Hon’ble Supreme Court in the case of Liberty India Vs. CIT (317 ITR 218) has held that the phrase “derived from” is narrower in connotation as compared to the phrase “attributable to”. By using the word derived from the Parliament intended to cover sources not beyond the first degree. Profits derived by way of incentives should be treated as separate items as revenue. The interest claimed on FDRs cannot be said to have direct nexus with the assessee business because the assessee is not in the business of finance and investment. Accordingly income has to be treated as income from other sources.*
5. *On the issue of eligibility of deduction of foreign exchange gains under section 80-IC of the Act, Hon’ble Bombay High Court, in the case of CIT vs. M/s. Shah Originals (ITA No. 431 of 2008), had held as follows:*

The business of the assessee consists of the manufacture and export of garments. The interest income which was generated from the deposits held in the EEFC Account would not fall for classification as income under the head of business and profession but, would fall for classification as income from other sources.”

7. The Ld. AR supported the order of the Ld. CIT(A) and drew our attention to written submission dated 04.10.2021 filed before the Tribunal which is extracted below:-

“3. Item-wise submissions on each issue are as under:

- a) **Interest on deposits – Rs. 4,66,791/-** : Interest was earned on the loans given to employees working for the eligible undertaking and on the FDRs which have been kept with various government departments and buyers as securities for the purpose of carrying on business. Thus, the interest income earned is inextricably linked to the main business activity of the assessee and deduction u/s 80-IC of the Act is allowable on the said income. Reliance is placed on the following judgments:
i)Havell India Ltd. Vs. DCIT in ITA no. 6194/D/2015 dated 19/01/2021 (Refer Internal pages 15-16)
 ii)Riviera Home Furnishing reported in 65 taxman.com 287 (Delhi)
- b) **Foreign currency fluctuation gain – Rs. 90,61,424/-:** Exchange fluctuation loss arose on export sales made by the eligible undertaking and therefore forms part of sale proceeds and is therefore eligible for deduction u/s 80IC of the Act. Reliance is placed on the ITAT decision in the case of **La Opala RG Ltd. Vs ACIT in ITA no. 559/Kol/2018 dated 31/10/2019** where the deduction of the foreign exchange fluctuation arising on export sale was allowed (**Refer internal pages 11-12**).
- c) **Liabilities Written Back – Rs. 45,42,389/-:** The said amount represent the liabilities provided for / creditors pertaining to the eligible units which have been written back during the year as the said amounts were not payable to them. Since the expenses / provisions pertained to the eligible undertaking, the write-back will lead to reversal of the said expense and thus, will be eligible for deduction u/ s 80IC of the Act.
- d) As regards the following amounts, it is submitted:

Provision for Doubtful Debts written back	61,94,289/-
Provision for Doubtful Advances written back	6,50,901/-
Provision for Security Deposits written back	2,50,000/-
Provision for Impairment of Assets	4,36,201/-

When a provision is made for doubtful debts and advances or for impairment of assets, the provision is claimed as expense in the profit and loss account. However, these provisions are disallowed in the computation of income as the same are not allowable as deduction.

When such provisions are written back or reversed in the subsequent year, then the same are credited to profit and loss account but are excluded from the net profit in the computation of assessable income as the same are not taxable as income since the same were not allowed as a deduction / expense at the time

of making such provision in the preceding year. Thus no income on account of reversal or write back of such provisions can be taxed in this year.

The provisions on these accounts made in the AY 2013-14 i.e. preceding year were disallowed in the computation of income and were not claimed as expense (Refer page 2, 12, 39). The above amounts have been written back in the year under consideration out of the provisions made in the earlier year (Refer page 13,14 and 15) and therefore the same are not taxable at all and therefore have to be excluded out of the net profit.

Furthermore, the assessee has excluded the amount of Rs. 61,94,289/- being doubtful debts written back in the computation of assessable income and the said amount is not included in the business income of Rs. 25,04,66,712/- and no deduction u/s 80IC has been claimed on the said income at all. Thus, no disallowance of the said amount can be made.

In view of the above, no disallowance of amounts of provisions reversed or written back should be made and the addition so made should be deleted.”

8. We have carefully considered the contentions raised by the Ld. Representative of the parties in their written submissions and perused the records. Perusal of the appellate order would reveal that the Ld. CIT(A) incorporated the submissions of the assessee in para 4 of the appellate order and on consideration thereof recorded his findings in para 5 of his order which is reproduced hereinbelow:-

“1. As regards the interest income of Rs. 4,66,791/-, it was submitted by the appellant that the same was earned on two counts(a) from loans given to employees of the eligible unit and (b) from the FDRs kept with sales tax department and canteen store department for business need and therefore the interest has been earned from eligible undertaking. Identical issue came for consideration in the A.Y. 2012-13 in the case of the assessee where in the Ld. CIT(A) allowed the disallowance of interest by holding that these FDRs were not made out of surplus fund lying idle and therefore, the interest income is eligible for deduction u/s 80IC by relying upon the decision in the case of Riviera Home Furnishing reported in 65 taxman.com 287 (Delhi) wherein it was held that “ Interest on FDRs which were under lien with Bank for facilitating letter of credit and bank guarantee facilities would qualify for deduction under section 10B”. Since there is no change

in the facts as compared to the A.Y. 2012-13, following the decision of Ld. CIT(A), the addition is hereby deleted.

2. As regards the issue of foreign currency exchange fluctuation Rs. 90,61,424/-, it was submitted by the appellant that this exchange fluctuation arose on export sales made by the eligible undertaking for which bills were raised in foreign currency. The amount of foreign currency fluctuation forms part of the sale proceeds and is therefore eligible for deduction u/s 80IC. Identical issue came for consideration in the A.Y. 2012-13 in the case of the assessee where in the Ld. CIT(A) allowed the appeal of the appellant and deleted the disallowance by holding that the foreign currency exchange fluctuation forms part of sale proceeds of the eligible undertaking and is therefore eligible for deduction in view of the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Rachna Udyog reported in 230 CTR 72 wherein it was held that "Deduction under section 80-IB is not allowable in respect of duty drawback, export entitlement and DEPB licence, but is allowable in respect of exchange rate difference as the exchange rate fluctuation arises out of and is directly related to the sale transaction involving the export of goods of the industrial undertaking." Since there is no change in the facts as compared to the A.Y. 2012-13, following the decision of Ld. CIT(A), the addition is hereby deleted.

3. As regards the disallowance of liability written back of Rs. 45,42,389/-, it was submitted by the appellant that the said amount represented the liabilities provided for expenses / creditors pertaining to the eligible units which have been written back during the year as the said amounts were not payable to them or there was excess provision of expenses in the earlier years. Since these liabilities/creditors pertained to eligible undertakings, therefore the remission of such liability will bear the character of income from eligible undertaking, identical issue came for consideration in the A.Y. 2012-13 in the case of the appellant where in the Ld. CIT(A) allowed the appeal of the appellant by holding that the appellant has claimed that the same amount was earlier written off but subsequently it was return back and credited in the books of account which is part of the sales proceeds so same is eligible for deduction u/s 80IC. Following the order of CIT(A) since the expenses / provision for expenses pertained to the eligible undertaking, the write back / reversal of the said expenses / excess provision will form income from eligible undertaking. So, the same is eligible for deduction u/s 80IC. Since there is no change in the facts as compared to the A.Y. 2012-13, following the decision of Ld. CIT(A), the addition is hereby deleted.

4. As regards the amount of Rs. 61,94,289/- being provision for doubtful debts written back, Rs. 6,59,901/- being doubtful advances written back, Rs. 2,50,000/- being security deposit written back and Rs. 4,36,201/- being provision on impairment of assets, the appellant submitted that when any provision is made, the same is claimed as expenses in the P&L a/c. However, since such provisions are not allowable as deduction under the I.T. Act, the amount of said provisions are disallowed in the computation of assessable income. When the provision is written back, it is credited to the P&L a/c as income but the same is not taxable as income since no deduction was allowed at the time of making the provision. It was further submitted that since no deduction has been allowed in the earlier years when the said provision were made, no income can be taxed in this year when these provisions were written back. Identical issue came for consideration in the A.Y. 2012-13 in the case of the appellant where in the Ld. CIT(A) allowed the appeal of the appellant by holding as under:-

“The appellant has explained that the expense was claimed in the P&L account. But the same was disallowed while computing the taxable income. When such provision was reversed the same was declared as income in the P&L account. However, same has to be reduced while computing the taxable income as the same had never been allowed as expense in the earlier years. The same amount is already included in net profit. So, considering the above submission, I find that the assessee has the assessee has correctly reduced this amount while computing the taxable income and therefore the same cannot be computed back for computing the business income or profit eligible for deduction u/s 80IC”.

4.1 Since there is no change in the facts as compared to the A.Y. 2012-13, following the decision of Ld. CIT(A), the addition is hereby deleted.

5. As regards the amount of Rs. 2,10,476/- declared as miscellaneous income, it was submitted by the appellant that this included (a) the amount of bank charges recovered from dealers and distributors (b) registration fee received from dealers and (c) VAT rebate received on deposit of sales tax on sales, etc. The Ld. AR submitted in detailed about the nature of miscellaneous income and argued that these are part of the eligible undertaking and deduction u/s 80IC should be allowed. Identical issue came for consideration in the A.Y. 2012-13 in the case of the assessee where in the Ld. CIT(A) allowed the appeal of the appellant by holding that miscellaneous income is not derived from the manufacturing activities so, same is not eligible for deduction u/s

80IC. Since there is no change in the facts as compared to the A.Y. 2012-13, following the decision of Ld. CIT(A), the addition is hereby confirmed.”

9. The submissions filed by the parties are only reiteration of what the Ld. AO has stated in the assessment order and what the assessee submitted before the Ld. CIT(A). It is observed that similar disallowance of interest was made in AY 2012-13 which was held to be eligible by the Ld. CIT(A) relying on the decision (supra) of Hon'ble Delhi High Court in Riviera Home Furnishing against which the Revenue did not go in further appeal. Even if the reason attributed to acceptance of the order of the Ld. CIT(A) on account of low tax effect as argued by the Ld. DR, the fact remains that the order of the Ld. CIT(A) in AY 2012-13 has attained finality. The facts remaining the same in AY 2014-15, the Ld. CIT(A) was perfectly justified in deleting the impugned addition. Accordingly, we reject ground No. 1 of the Revenue.

10. While deleting the addition on account of foreign currency exchange fluctuations, the Ld. CIT(A) followed the order of his predecessor for the preceding AY 2012-13 in which the Ld. CIT(A) relied on the decision (supra) of Hon'ble Bombay High Court in Rachna Udyog rendered in the context deduction under section 80IB of the Act. The reliance placed by Ld. DR on the decision in M/s. Shan Original is misplaced, to say the least as it was rendered in the context of interest income generated from deposits held in the EEFC account by an assessee whose business consisted of manufacture and export of garment. The facts being altogether different and decision being in the context of interest income, the Revenue cannot get any benefit. The decision (supra) in Rachna Udyog relied upon by the Ld. CIT(A) specifically dealt with the issue of exchange rate fluctuation. We, therefore, uphold the order of the Ld. CIT(A) and decide ground No. 2 as well against the Revenue and in favour of the assessee.

11. As regards deletion of addition on account of liability written back of Rs. 45,42,389/-, the Ld. CIT(A) followed the order of his predecessor pertaining to AY 2012-13. The facts and circumstances continue to remain

the same in AY 2014-15 and therefore the Ld. CIT(A) has rightly followed the order of AY 2012-13 in this regard. Nothing has been brought on record by the Revenue to enable us to take a different view. We, therefore, confirm the findings of the Ld. CIT(A) and reject ground No. 3 of the Revenue.

12. We observe that the Ld. CIT(A) has followed the order of his predecessor for AY 2012-13 on the issue of deletion of the addition of Rs. 75,31,391/- for provision of doubtful debts, doubtful advances written back as also security deposit written back and impairment of assets. The parties have agreed that facts and circumstances are identical in AY 2014-15, therefore, we do not find any infirmity in the order of the Ld. CIT(A) which we endorse and consequently decide ground No. 4 also against the Revenue.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17th February, 2023.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 17/02/2023

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	