

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
*(Virtual hearing)*

**ITA No.1358/Ind/2016**  
**Assessment Year: 2010-11**

ACIT (Central)-2, Indore	<b>बनम/</b> Vs.	Shakti Pumps (India) Ltd. 226, Shastri Market, M.G. Road, Indore
(Appellant / Revenue)		(Respondent / Assessee)
<b>PAN: AA ECS 5027 L</b>		

Revenue by	Shri P.K. Mishra, CIT-DR
Assessee by	Ms. Nisha Lahoti & Vijay Bansal, Ars
Date of Hearing	23/11/2022 / 22.02.2023
Date of Pronouncement	26.04.2023

**आदेश / O R D E R**

**Per B.M. Biyani, AM:**

Feeling aggrieved by appeal-order dated 30.09.2016 passed by learned Commissioner of Income-Tax (Appeals)-II, Indore [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 31.03.2013 passed by learned ACIT-4(1), Indore [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2010-11, the revenue has filed this appeal on following grounds:

**“1. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in deleting the addition made on the basis of the order of ITAT on the issue of 263 of the Act.**

**2. On the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in allowing the appeal on the basis that AO had**

***reallocated the expenses without resorting to the provision of section 145 of the Act in an arbitrary and adhoc manner.”***

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Briefly stated the facts are such that the assessee is company engaged in the business of manufacturing of submersible pumps, mono block pumps, control panels and trading of accessories, etc. For the relevant AY 2010-11, the assessee filed return showing total income of Rs. 44,06,730/- on 29.09.2010, after claiming exemption u/s 10AA of Rs. 7,00,89,407/- in respect of income earned from its SEZ unit. The case of assessee was subjected to scrutiny-assessment by issuing statutory notices u/s 143(2)/142(1); thus the assessment was completed by an order u/s 143(3) dated 31.03.2013. While doing so, Ld. AO reduced the quantum of exemption u/s 10AA from Rs. 7,00,89,407/- to Rs. 2,82,95,861/-; in other words the exemption was denied to the extent of Rs. 4,17,93,546/- and the total income was increased correspondingly. Aggrieved, the assessee went in first-appeal and succeeded. Now, the revenue has come in next appeal assailing the order of first-appeal.

4. The sole controversy in present appeal is *qua* the addition made by AO by reducing exemption u/s 10AA on account of re-allocation of expenses but deleted by Ld. CIT(A) in first-appeal.

5. Ld. DR representing the revenue carried us to Page No. 7 to 13 of assessment-order and submitted that the assessee has two manufacturing units, one located in Domestic Tarrif Area (DTA) and other in Special Economic Zone (SEZ). While DTA unit is not eligible for any exemption, the SEZ unit is enjoying exemption u/s 10AA. He submitted that during scrutiny-assessment, the AO found that the assessee has charged higher amount of various expenses to DTA unit and lower amount to SEZ unit; thereby inflated the profit of SEZ unit because the SEZ unit yields non-taxable income on account of exemption u/s 10AA. Therefore, the AO

confronted the assessee on this aspect, in response to which the assessee filed reply which is re-produced by AO on Page No. 2 to 6 of assessment-order. Ld. DR submitted that after due consideration, the AO observed on Page No. 7 to 13 of assessment-order that the ratio of “material consumption” of DTA unit and SEZ unit was 51:49 but other expenses such as manufacturing, selling & distribution, legal & professional, repairs & maintenance, financial charges, employees, administrative expenses, etc. charged to DTA unit and SEZ unit were not in tandem with the ratio of “material consumption” i.e. 51:49. Finally the AO, giving weightage to the fact that there could be difference in expenditure due to certain reasons, adopted 60:40 allocation-ratio for DTA unit and SEZ unit. Accordingly, the AO allocated 40% of expenditure to SEZ unit and re-computed the profit of SEZ unit. Ld. DR submitted that such exercise done by AO is very much conscious and correct on the facts and there is no infirmity. Ld. DR strongly supported the order of assessment passed by AO. Then, Ld. DR opposed the order of first-appeal passed by CIT(A) and argued that the CIT(A) has granted relief to assessee by observing that the issue is squarely covered by **ITAT, Indore in appellant’s own case for AY 2009-10 and 2008-09 in ITA No. 377 & 378/Ind/2013, order dated 26.07.2016**. Ld. DR submitted that the said order of ITAT, though involved an identical issue, but the same was in a matter which tested/examined the revision-proceeding u/s 263 conducted by revenue, which cannot be said to have adjudicated the issue substantively/fully. Therefore, the reliance of CIT(A) on such order is quite mis-placed. With these submissions, Ld. DR prayed to uphold AO’s action.

6. Replying to above, Ld. AR representing the assessee initially carried us to relevant paragraph of aforesaid **ITA No. 377 & 378/Ind/2013, order dated 26.07.2016** passed by ITAT for AY 2009-10 and 2008-09 in assessee’s own case; the same is extracted below:

*“28. Regarding next observation of the Commissioner of Income-tax, we find that he has observed that material consumed in SEZ unit is 44.66% and manufacturing expenses, selling and distribution expenses and expenses on employees were only 636%, 2.80% & 13.48% respectively, we find that the Assessing Officer vide order sheet entry dated 01/11/2010, copy of which is placed at page No. 124 & 125 of the paper book specifically required the assessee to explain the low gross profit, net profit on domestic sales as compared to SEZ profit and the assessee filed details before the Assessing Officer explaining the same, copies of which is also filed before us at Page No. 9 & 10 and 102 to 114 of the paper book. The Assessing Officer being satisfied with the explanation and after examining the same from the details furnished, has accepted the explanation of expenses. Thus we find that the Commissioner of Income-tax was not justified in observing that the difference in proportion of expenses and consequently in the proportion of net profit in different units were not examined by the Assessing Officer. Moreover, the assessee also pointed out that only Submersible Pump was manufactured in SEZ unit, whereas products manufactured in non-SEZ unit were Submersible Pump, Mono block, Control panel. Thus, the product mix manufactured in two units were different and therefore, the activities of the two units are not exactly same. Still further, separate books of accounts were maintained in respect of each unit, which were also produced before the Assessing Officer and were examined by the Assessing Officer. The Commissioner of Income-tax was not justified in speculating that either the sale of the SEZ unit was inflated or expenses of SEZ unit were suppressed without bringing any cogent material on record.”*

Analysing this, Ld. AR submitted that although it was a matter testing the revision-order u/s 263 yet the ITAT has categorically accepted certain key factors which are very much identical in assessee's case year-after-year including current year under consideration, namely (i) only Submersible Pump was manufactured in SEZ unit, whereas products manufactured in non-SEZ unit were Submersible Pump, Mono block, Control panel. Thus, the product mix manufactured in two units were different and therefore, the activities of the two units are not exactly same; (ii) Separate books of accounts were maintained in respect of each unit; and (iii) CIT was not justified in speculating that either the sale of SEZ unit was inflated or expenses of SEZ unit were suppressed without bringing any cogent material on record. Ld. AR submitted that these are the basic and vital facts to resolve the present controversy also, as would be seen in the subsequent

discussion, therefore it can't be said that the reliance of CIT(A) on the order of ITAT is mis-placed.

7. Having said so, Ld. AR carried us to Para No. 2.1 of the appeal-order of Ld. CIT(A); we re-produce for an immediate reference:

**“2.1 These grounds of appeal are squarely covered by the decision of the Hon’ble ITAT bench Indore in appellant’s own case for A.Y. 2009-10 and 2008-09 pertaining to appeal No. IT-323/14-15 & IT-322/14-15 (the correct appeal No. is ITA No. 377 & 378/Ind/2013, order dated 26.07.2016) respectively. However, in the interest of justice, a detailed order is being passed after objectively taking into account both the facts as pointed out by the Ld. AO in his assessment-order as well as the detailed submissions so given during the time of appeal hearing by the appellant.”**

Ld. AR went down to subsequent paragraph No. 2.2 to 2.44 of the order of CIT(A) (running over 7 pages) and successfully demonstrated that the CIT(A) has made an extensive analysis of the facts of the issue in the light of judicial rulings and thereafter granted relief to assessee very objectively and conclusively. Hence, the revenue is wrong in agitating that the CIT(A) has granted relief to assessee merely on the basis of ITAT order in revision-proceeding u/s 263; the fact is that the CIT(A) has duly considered the controversy at length on merits from all angles and thereafter granted relief.

8. Finally, Ld. AR read over the findings/conclusions made by CIT(A) line by line and argued that his order is well-reasoned and does not require any interference.

9. We have considered rival submissions of both sides and perused the orders of lower-authorities. First of all, from the first appellate order, we find that the CIT(A) has granted relief to the assessee by following observations and findings:

“2. These grounds of appeal are primarily against the reallocation of the expenses between the SEZ unit and DTA units of the appellant company.

**2.1 These grounds of appeal are squarely covered by the decision of the Hon'ble ITAT Bench Indore in appellant own case for A.Y.2009-10 & 2008-09 pertaining to appeal no. IT-323/14-15 and IT-322/14-15 (the correct appeal No. is ITA No. 377 & 378/Ind/2013, order dated 26.07.2016) respectively. However, in the interest of justice, a detailed order is being passed after objectively taking into account both facts as pointed out by the Ld. AO in his assessment order as well as the detailed submissions so given during the time of appeal hearing by the appellant.**

2.2 These grounds of appeal emanate from the action of the Ld. AO in reallocating the expenses between DTA and SEZ unit of the appellant company in a flat and uniform ratio of 60:40.

2.3 The assessee has two geographically distinctly located manufacturing units for domestic and export sales -

a) DTA unit submersible pumps, mono block pumps control panels and trading of their accessories,

b) SEZ unit stainless steel submersible pump sets

2.4 Assessee has been maintaining separate sets of books of accounts for each unit from the past. This fact is not disputed by the Ld. AO also in his assessment order. It has been submitted by the appellant that the two units are totally independent. Further, it was also pleaded that both the units are distinctly placed and are being managed by entirely separate staff as regards their production, administration, marketing, accounts & finance, work force management.

2.5 The appellant also claimed that the books of accounts of SEZ and DTA units are separately audited and signed by the auditors and a separate consolidated audit report and consolidated annual accounts are prepared.

2.6 The profit of business of SEZ unit are exempted u/s 10AA of the Act for which certificate from the Chartered Accountant was furnished in Form 56F as required by section 10AA(8) r.w.s. 10A(5).

2.7 SEZ unit enjoys certain benefits in indirect taxes for its material procurements which includes Basic Customs Duty, CVD, SAD, VAT. It was stated by the appellant that all these tax benefits totals up to approximately 22% which is directly reflected in the net earnings of SEZ unit when compared with the DTA unit.

2.8 It was further claimed by the appellant trading sales are restricted to DTA unit only that the SEZ unit has only manufacturing sales and nil trading sales.

2.9 It was also submitted by the appellant that since both the units are located at separate locations, each unit maintains its own inventory separately.

2.10 The appellant also said that the Ld. AO observed and perused the Profit and Loss accounts of both the SEZ and DTA units and this very observation of AO itself demonstrates that the two units have separate books of accounts with their own final accounts statements which were produced before the Ld. AO. [refer AO Page 2 Para 3]

2.11 The appellant stated that three separate sets of audited annual accounts of the assessee were before the Ld. AO which are on record and forming part of the Paper Book filed by the appellant during the appeal proceedings as below-

- a. Consolidated for the assessee: PB 11 to 66
- b. DTA Unit Standalone : PB 67 to 11
- c. SEZ Unit Standalone : PB 112 to 133

2.12 As per appellant, the Ld. AO took sales as the base for arriving at percentage of each expense though most of these expenses did not have direct nexus to sales as a base.

2.13 It was further argued that the Ld. AO assumed that both the units are manufacturing same products and therefore took nature of expenses to be same for both the units.

2.14 The appellant stated that the books of accounts produced for the two units have been duly audited with no adverse remarks of qualifications from the auditors. Complete set of final accounts with relevant schedules, annexure, audit report for Consolidated, SEZ Unit and DTA Unit were filed before the Ld. AO and are on record. Tax audit report, Form 56F for claiming 10AA benefit, Form 29B for MAT calculations were also before the Ld. AO.

2.15 The appellant has submitted that all the expenses were incurred in the respective units for the legitimate business needs which were genuine, verifiable and duly supported with relevant documents. None of the expenses have been held by the Ld. AO to be bogus, illegal, not for the purpose of business or not verifiable.

2.16 It has been submitted by the appellant during appeal hearing that without bringing any positive and corroborative material on record, the Ld. AO held that the appellant had inflated the profit of its SEZ unit through adjustment of actual production and expenses with a view to claim higher deduction and thereby to reduce taxable income. The appellant also argued that while perusing the audit reports of DTA, SEZ units and consolidated report, Ld. AO concluded that there is a mistake in the calculation of consumption of raw material wherein he failed to consider the Inter-unit transfer which gets eliminated at the time of Consolidation.

2.17 Considering material consumption in the two units, Ld. AO approached to reallocate the total expenses incurred as per Consolidated P&L in the ratio of 51:49 between DTA and SEZ units. Total expenses for reallocation on the basis of 'material consumption' include-

- a. Manufacturing expenses
- b. Selling and Distribution expenses
- c. Legal and Professional charges
- d. Repairs and Maintenance charges
- e. Financial charges
- f. Expenses on Employees
- g. Administrative expenses
- h. Other expenses

2.18 The appellant has claimed during the appeal proceedings that the Ld. AO, without countering the explicit and detailed reply given by the assessee justifying for each item of expense head along with production of books of accounts, made a general remark and concluded on the flat and uniform reallocation ratio of 60:40 for reallocating the above mentioned total expenses from the Consolidated P&L, between DTA and SEZ units.

2.19 It is observed from the assessment order that the Ld. AO mechanically made the additions by reallocating the expenses in the ratio of 60:40 based on arbitrary and adhoc approach without any cogent evidence to support.

2.20 It is seen that while adopting and concluding on such an approach, nowhere in the assessment order, the Ld. AO has doubted the correctness or completeness of the duly audited books of accounts or the method of accounting regularly followed by the assessee.

2.21 It is further seen that the Ld. AO has nowhere recorded any finding or even raised any doubt about the completeness or reliability of books of accounts, bills, vouchers produced by the assessee.

2.22 The appellant has stated that as envisaged in section 145, the assessee had been maintaining its books of accounts for the two units separately on the basis of method of accounting regularly employed for past several years. The appellant further claimed that there have been no changes in the method of accounting when compared with the preceding years. These facts stated by the appellant are found to be true.

2.23 It has been observed that no satisfaction has been recorded by the Ld. AO in terms of Section 145 to reject the book results and arrive on an adhoc basis at the reallocation ratio of 60:40 for allocating the total expenses from the Consolidated P&L between DTA and SEZ units.

2.24 A perusal of the assessment order reveals that with adhoc reallocation of expenses, the claim u/s 10AA of SEZ unit was reduced and taxable total income was enhanced.

2.25 The relevant portion of the assessment order page no.14 is reproduced as under:-

*"The assessee has shown exempted income u/s 10A Rs.70089407/- after reallocation of expenses the exempted income has reduced by Rs.41793546/- and remained of Rs.28295861/-The reallocated expenses have reduced from the expenses of DTA unit. Therefore, taxable income has increased by Rs.41793546/-."*

2.26 It has been submitted by the appellant that it had correctly claimed deduction u/s 10AA in accordance with the provisions of section 10AA(7) wherein the 'profits of the business' of the undertaking shall be the profits as per its books of accounts maintained. The AR of the appellant further submitted that the legislature in its own wisdom had given definition of the term 'profits of the business' only in the context of deduction u/s 80HHC at Explanation (baa) to sub-section 4C of section 80HHC. He further argued that for the purpose of exemption u/s 10AA, computation mechanism of which is referred in sub-section (7), the term 'profits of the business' has not been defined ad on a rational footing, it must be taken as what is arrived by its books of accounts regularly maintained.

2.27 The appellant also pleaded that the provisions of section 80IA(5) are not applicable for claiming deduction u/s 10AA as section 80IA deals with and refers only to eligible business' as defined in that section.

2.28 The appellant further submitted that the provisions of section 80IA(8) and 80IA(10) are not applicable in relation to the issue under appeal as the matter relates to reallocation of expenses and not to the inter-unit transfer of goods or services.

2.29 The contention of the appellant are found to be correct in as much as that the Ld. AO has passed the assessment order u/s 143(3) but has approached on an estimation basis which is arbitrary, adhoc and devoid of any basis. The Ld. AO is free to resort to making assessment to the best of his judgment but only after following the process of law as defined u/s 145 and 144.

2.30 An assessing officer is a creature of the statute. He can exercise power either in accordance with the statute or not at all. In this context, a reference is made to the judgment in the case of *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* reported in 2003(2) SCC 111 wherein the following views were expressed -

*"The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said Act are only creature of statute. They must act within the four comers thereof."*

2.31 The above judgment was referred by in Para 8 by Hon'ble Calcutta High Court in the case of *Triyogi Narayan Singh [2015] 60 taxmann.com 351*

(Calcutta) dated 29.04.2014 while dealing with issue on assessment order made u/s 143(3) or 144 rws 145.

2:32 The appellant has further placed strong reliance on the decision in the case of Mewar Textiles Mills Ltd. [1999] 105 Taxman 199 (Jaipur)(Mag.) Section 145 of the Income-tax Act, 1961 Method of accounting Estimation of income - Assessment years 1984-85 and 1985-86 Whether, where provisions of section 145(1) are not invoked, estimation of profit is not possible- Held, yes

*“The Commissioner (Appeals) had given its finding after considering all the facts of the case and the legal propositions. The Assessing Officer nowhere had invoked the provisions of section 145(1) and if provisions are not invoked, then the estimate of profit is not possible in the eyes of law. No defect of any kind was pointed out by the Assessing Officer. Therefore, the book results could not be ignored if the books of account were not rejected or any defect was not pointed out by the Assessing Officer. Therefore, there was no infirmity in the order of the Commissioner (Appeals) and the additions were to be deleted. (emphasis supplied)”*

2.33 The appellant has claimed results shown by the assessee Company are duly supported by books of account and no defects were pointed out. I strongly feel that in case the Ld. AO was not satisfied about the results, nothing prevented him from exploring the possibilities of disallowance with respect to specific expenditure. However, the course of action he adopted, i.e., without rejecting the books of account, reallocated the total expenses from the Consolidated P&L between DTA and SEZ units in mechanical way by applying a uniform ratio of 60:40 cannot be given any judicial approval.

2.34 It is seen that the onus on the assessee to produce sufficient records to show that how the profits were arrived at in the books of accounts of the two units was adequately discharged by the assessee.

2.35 The assessment is made purely on the basis of surmises and conjectures and without pointing out any specific defects in the correctness or completeness of accounting of expenses in the respective books of accounts of DTA and SEZ units. There is no legally sustainable merit in this kind of approach based on sweeping generalization for making such reallocation of expenses that too without invoking section 145 of I.T.Act, 1961. The assessment so made cannot be said to proper from any angle.

2.36 The decision of Waidhan Engineering & Industries (P) Ltd. [2015] 60 taxmann.com 440 (Jabalpur), order dated 27.03.2015 is relevant in this regard which dealt with similar aspect of the issue.

2.37 The appellant has placed reliance on the decision of Delhi Press Patra Prakashan [2006] 10 SOT 74 (Delhi) (URO). In this case, the assessee was claiming deduction u/s 80IA in respect of a Unit No.4. The said Unit was showing profit @ 62%. As against that, AO has noticed that a margin of profit shown by the assessee as a whole was XRE only to the extent of 10%. The AO has therefore recomputed the profit of the said Unit by applying sub-section

(10) of section 80IA and restricted the profit of the said Unit to 10% only. While dealing the issue, the Respected Coordinate Bench has concluded that it w not justified to disturb the working of profit merely because the profit rate of eligible unit was substantially higher than overall rate of profit of other Units of the assessee, more so when separate books were maintained by the assessee in respect of the said eligible Unit. The first proviso to section 145(1), or section 145(2), can be invoked only if and where the elements attraction either of those provisions are found to exist. A clear finding to that effect, along with the materials on which such finding is based, has to be made out and given by the Assessing Officer. No assessment under the first proviso to section 145(1) or u/s 145(2) can be sustained if the AO (or the appellate authority, in case of appeal) has not considered and recorded a finding against the assessee as to whether he has been regularly employing a method of accounting or whether his income, profits or gains can properly be deduced from his method of accounting if he has been regularly employing a method of accounting or whether the accounts are correct and complete, and the AO's decision on these matters is not to be a subjective or arbitrary decision but a judicial decision and cannot be accepted if there is no material to support his finding [emphasis supplied]

- a) S. Veeriah Reddiar [1960] 38 ITR 152 (Ker)
- b) JA Trivedi Bros. [1986] 158 ITR 705 (MP), SLP dismissed: [1991] 187 ITR (St.) 37 (SC)

2.38 The head note in the case of decision of Cristopia Energy Systems Pvt. Ltd 2010] 16 ITJ 8 (Indore), by Hon'ble jurisdictional ITAT bench, read -

*"Assessee engaged in manufacturing chillers and nodules - during the year, assessee used two new raw materials, which resulted in substantial increase in cost - AO compared the consumption of raw material with consumption in earlier year and held that in spite of increase in cost of raw material, the sale price could not be increased AO therefore adopted overall raw material consumption ratio of earlier year as a basis for deduction of cost- HELD Basis of AO's order is not correct - offered by assessee is reasonable Explanation Further, AO has nowhere doubted the correctness or reliability of books - Addition cannot be sustained."*

2.39 It was argued by the appellant in the instant case also, Ld. AO has adopted the material consumption ratio at a random figure of 60:40 to reallocate expenses from the Consolidated P&L between DTA and SEZ units. It was further claimed by the appellant that the detailed explanations were offered. Nowhere the Ld. AO doubted the correctness or reliability of books of accounts of the two units.

2.40 Although discretion is vested in the AO, the discretion cannot be exercised arbitrarily or capriciously or dishonestly. The AO must exercise his judgment in such a manner as would make it possible for in to ascertain the profits and gains of the assessee most approximating to truth and must exercise his discretion and dgment judicially and reasonably.[emphasis supplied]

- a) Sarangpur Cotton Mfg. Co. [1938] 6 ITR 36 (PC)
- b) McMillan & Co. [1958] 33 ITR 182 (SC)
- c) KY Pilliah & Sons [1967] 63 ITR 411 (SC)

2.41 Jurisdictional Hon'ble ITAT Indore Bench dealt with similar disallowance of deduction u/s 80HHC on a charge that assessee might have incurred other expenses than debited in P&L, in the case of Bhaskar Trading Corporation [2007] 91TJ 141 wherein at Para 17.9 it was held:-

*"The Ld. CIT(A) though reduce the deduction u/s 80HHC of the IT Act to the assessee but did not bring any evidence on record to prove what was direct cost or indirect cost attributable to such exports. There is no provision in section 80HHC of the Act (like provision in section 80IA(10) for computing the profit derived from export business eligible for deduction thereunder. In the absence of such provision, the profit of business must be determined in accordance with the settled legal principle and commercial accounting practice Le. the businessman would debit all his expenses in the profit and loss account either on the basis of expenditure actually incurred or liability incurred. There is no scope for presumption that the assessee might have incurred other expenses than that debited under the profit and loss account to claim higher exemption under section 80HHC. The finding of the CIT(A) are merely based upon assumption and presumptions. The assessee has satisfied the condition of Section 80HHC therefore the Ld. CIT(A) merely on presumption should not have reduced the claim of the assessee. In the absence of any material on record against the assessee, the finding of Ld. CIT(A) cannot be sustained."* [emphasis supplied]

2.42 The appellant has also placed reliance on the decision of jurisdictional Hon'ble ITAT Indore Bench in the case of Raj Ratan Wire Ltd [2007] 9 ITJ 312 (Indore) though it relates to deduction claimed u/s 80IA of the Act.

*"Deduction claimed in respect to Wire division, which was in profit. The other division was in loss for which no deduction was claimed Assessee maintained separate books of accounts and quantitative details - AO denied deduction holding that the deduction is to be allowed after setting off of loss from one division against profit of other division HELD- The units are totally independent-Decision of Supreme Court in Canara Workshop (P) Ltd (1986) 161 ITR 320 directly on issue- Deduction to be allowed."*

2.43 The appellant further claimed that the Ld. AO drew certain inferences without any basis and profits of DTA units have been lowered as compared to SEZ Unit and reallocated the expenses so as to reduce the claim made u/s 10AA.

2.44 It was further submitted that the separate books are maintained and the two units are totally independent, the reallocation done without bringing any

positive material on record for such action and without following the provisions of section 145, is illegal and arbitrary.

2.45 Keeping in mind the jurisdictional bench decision in the appellant's own case for A.Y. 2009-10 & 2008-09 pertaining to appeal ng IT-323/14-15 & IT-322/14-15 **(the correct appeal No. is ITA No. 377 & 378/Ind/2013, order dated 26.07.2016)** respectively where the fact based findings on this issue in favor of assessee is given in Para 28 Page 29. The last sentence of the said para states - **"The Commissioner of Income Tax was not justified in speculating that either the sale of the SEZ unit was inflated or expenses of SEZ unit were suppressed without bringing any cogent material on record."**

**2.46 Since, the facts of the case in the present assessment year are identical to the years in which the Hon'ble ITAT bench Indore has decided in favor of the appellant and based on the above discussion especially keeping in mind the fact that the AO had reallocated the expenses without resorting to the provision of section 145 in an arbitrary and adhoc manner, this ground of appeal is allowed."**

10. On perusal of same, we find that the CIT(A) has made several meritorious, objective and extensive findings; only thereafter he has accepted assessee's claim and granted relief. We sum up the key findings below:

- (i) The assessee is having two independent units, viz. "DTA unit" and "SEZ unit". Both units are geographically located at distinct places;
- (ii) The DTA Unit is manufacturing submersible pumps, mono block pumps, control panels and trading of their accessories; SEZ unit is manufacturing stainless steel submersible pumps; thus the product mix manufactured in two units are different and the activities of the two units are not same;
- (iii) Both units maintain separate set of books of account and are managed by separate staff in functional areas of production, administration, marketing, accounts, finance, work force;
- (iv) Both units have separate inventories;

- (v) The books of account of two units are separately audited, independent financial statements are prepared and separate profitability is ascertained (although the assessee has also prepared a consolidated financial statement for reporting);
- (vi) The assessee has filed Form 56F, a certificate of Chartered Accountant, which certifies the quantum of exemption;
- (vii) During assessment-proceeding, the assessee has given a detailed submission which is re-produced in assessment order, to explain the expenses incurred in DTA unit and SEZ unit; the AO has, without countering such submission, speculated that the expenses of SEZ unit have been lowered. The AO has, without bringing any material on record, applied a single, uniform, adhoc allocation ratio of 60:40 to various type of expenses; (viii) The AO has taken “material consumption ratio” as a basis for allocation of all expenses without showing any rationale;
- (viii) Lastly, the assessee has incurred all expenses independently in their respective units and recorded in respective books of account. The AO has not rejected such independent books of accounts maintained by assessee u/s 145. In fact, the AO has nowhere doubted the correctness or completeness of books of account or even found any mistake therein, much less rejection.

11. We also find that the order of ITAT in ***ITA No. 377 & 378/Ind/2013 dated 26.07.2016*** was although in the matter involving revision u/s 263 yet there are certain vital facts which have convergence in the current-year as well, namely (i) only Submersible Pump was manufactured in SEZ unit, whereas products manufactured in non-SEZ unit were Submersible Pump, Mono block, Control panel. Thus, the product mix manufactured in two units were different and therefore, the activities of the two units are not exactly same; (ii) Separate books of accounts were maintained in respect of

each unit; and (iii) There is no justification in speculating that either the sale of SEZ unit was inflated or expenses of SEZ unit were suppressed without bringing any cogent material on record. Hence, the Ld. CIT(A) was justified in gaining support from this order also and the revenue's agitation that such a reliance by CIT(A) was mis-placed, does not have much weightage.

12. In view of above discussion and for the reasons stated therein, we are of the considered view that there is no infirmity in the order of CIT(A) which is a well-reasoned, detailed order dealing with all aspects of the issue. Therefore, we do not find any valid reason to interfere with the decision of Ld. CIT(A) whereby he has deleted the addition made by AO. That brings us to conclude that the revenue does not have a sound case and fails in this appeal.

**13. Resultantly, this appeal of revenue is dismissed.**

<i>Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 26/04/2023.</i>
---

<i>Order pronounced in the open court on ...../...../2023.</i>
--

Sd/-

(Madhumita Roy)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 26.04.2023

Patel/Sr. PS

- Copies to:*
- (1) The appellant*
  - (2) The respondent*
  - (3) CIT*
  - (4) CIT(A)*
  - (5) Departmental Representative*
  - (6) Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	