

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 2033/Del/2014, A.Y.2009-10
ITA No. 6178/Del/2014, A.Y.2010-11
ITA No. 3381/Del/2016, A.Y.2011-12**

M/s. C & S Electric Ltd. (Formerly known as Controls & Switchgear Co. Ltd.) 222, Okhla Industrial Estate Phase-III, New Delhi- 110020 PAN : AAACC0909K	Vs.	ACIT, LTU, New Delhi
Appellant		Respondent

Assessee by	Sh. Anil Bhalla, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR
Date of hearing:	19.07.2023
Date of Pronouncement:	21.08.2023

ORDER

Per Anubhav Sharma, JM :

The assessee is in appeal challenging the following orders of Id. Tax Authorities
Below :-

Appellant Name	A.Y.	ITA No.	Date of A.O.	Date of CIT(A)
M/s. C & S Electric Ltd.	2009-10	2033/Del/2014	29/12/2011	03/01/2014
M/s. C & S Electric Ltd.	2010-11	6178/Del/2014	14/03/2013	29/08/2014
M/s. C & S Electric Ltd.	2011-12	3381/Del/2016	28/02/2014	27/04/2016

2. The assessee is engaged in the business of manufacturing of electrical equipment like switches and sockets, Air Circuit Breakers, Panels, Relays, Bus Duct, Bus Trunk etc. and during the relevant assessment years Ld. AO made additions which were sustained by the Ld. CIT(A) and the assessee is in appeal.

3. Heard and perused the record. Ld. AR has submitted that grounds in three appeals except one are common and covered in favour of assessee in assessee's own case for AY 2008-09. Accordingly the grounds in respective appeals are determined with grounds for AY 2009-10 being reproduced below;

“1) The Learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in partly confirming the action of the learned Assessing Officer in reducing the deduction claimed u/s 80IC of the Income Tax Act, 1961 by Rs. 19,998/-allegedly on the ground that transfer from Non-80IC to 80IC units has not been made at the market value so as to take the tax advantage.

1.1) The Learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in not adjudicating upon the appellant company's grievance that the AO had incorrectly reduced the deduction u/s 80IC by Rs.1,32,23,357/- on the ground that the allocation of Head office expenses had not been made to 80IC units.

2) The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in upholding the action of the learned Assessing officer in reducing the deduction claimed u/s 10A by Rs.19,80,818/- alleged on the ground that export proceeds amounting to Rs.1,90,30,863/- have not been received within the prescribed time specified by sub- section (3) of section 10A of the Act and in ignoring that as per Master Circular issued by Reserve Bank of India, there was no requirement to recover within the prescribed time limit and in any case erred in ignoring the fact that the sale proceeds had been recovered within the time limit prescribed by Reserve Bank of India.

The learned Commissioner of Income tax (Appeals) has erred both on facts and in law in upholding the action of the learned

Assessing officer in reducing, the deduction claimed u/s 10B of the Act by considering the amount of Rs. 5,58,054/- twice whereas this amount is part of the amount of Rs. 6,42,083/- written off by the assessee company, and not included by CIT(A) for computing deduction u/s 10B of the Act.

3) The learned Commissioner of Income Tax(appeals) has erred both on facts and in law in granting part relief and upholding the action of learned Assessing officer regarding the balance addition of foreign travelling expenses amounting to Rs. 11,08,990/- and ignoring the fact that the assessee company had paid FBT on such travelling expenses.

4) The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in upholding the action of the learned Assessing officer in disallowing the claim of ESIC amounting to Rs 3,00,770/- representing additional demand raised by Employees State Insurance Corporation and paid by the assessee company but wrongly debited to as penalty and was added in the computation of income due to an inadvertent clerical mistake.

5) The appellant craves leave to add, alter or amend the ground of appeal at a later stage.”

4. The **Ground No. 1** arises from the reduction made by the Id. AO on account of entered transferred of goods with reference to Section 80IC(7) r.w.s. 880IA(8) of the Act which was restricted by the Ld. CIT(A) and department appeal have been dismissed in view of the law tax effect. It can be observed that assessee’s own case ITA no. 3143/Del/2013 and ITA no. 3364/Del/2013 for A.Y. 2008-09. The issue is covered in favour of the assessee with following relevant findings in para no. 6 as follows :-

“6. Ld. DR even though contended that the assessee has not taken this plea before the AO but we found that the assessee has taken this plea before the AO and the Ld. CIT(A). We also noted that the component transfer to panel unit are customer specific product and of different strength and specification therefore, they cannot be compared with the similar components company sold in the open market. The AO had made the adjustment due to the market value of the inter unit transfer but could not discharge the onus which in our opinion lie on him to ascertain the market value in respect of the component which were transferred by the assessee from one unit to

the other unit. The onus lies on the AO to bring the comparative instance if the AO was not able to bring any comparative instance, he should adopted the market value on the basis of the value as determined by the Government of India, Excise Department i.e cost plus 10%. Ignoring this value in our opinion, will tantamount to that provision of section 80IA(a) of the Act has not been correctly applied by the AO and, therefore on the basis itself ignoring the alternate contentions of the assessee that if any deduction has to be reduced u/s 80IC in respect of Panel Division that has to be reduced only by Rs.28,405/-. We allow Ground No.1 taken by the assessee and set aside the order of the Ld.CIT(A) confirming the reduction of the deduction claimed u/s 80IC of the Act by Rs.10,28,461/-. Thus, Ground No.1 and 1.2 taken by the assessee are allowed while Ground No.1 taken by the revenue stands dismissed.”

4.1 As Ld. DR has not pointed any difference in facts and law as relied in assessee’s case in AY 2008-09, respectfully following the same the ground is decided in favour of the assessee.

5. **The Ground no. 1.1.** The issue relates to deduction u/s 80IC denied by Ld. AO on the ground that the allocation of ‘head office’ expenses had not been made to benefit claiming 80IC units. It comes from the order of ld. CIT(A) that on page no. 22 he has discussed ground no. 2.1(i) and 2.2(i) which were on the connected issue but has not given any conclusive findings. Thus considering same to be declined the ground is being decided. Ld. AR has pointed out that vide ITA no. 3364/Del/2013 for A.Y. 2008-09, the issue has been discussed in favour of the assessee with following relevant findings and following the same the **ground is decided in favour** of assessee ;

“We noted that in the case of Catvision Products Ltd. 84 TTJ (Del) 241. This Tribunal has held that only the direct expenditure had to be considered while working out the profit for the purpose of deduction u/s 80IC. Mumbai Bench of the ITAT also in the matter of DCW Ltd. 132 TTJ (Mum.) 442 held for the purpose of section 80IA that indirect expenses cannot be reckoned in the computation of determining the profits of the eligible undertaking. Ld. DR even though vehemently referred to the

order of the AO but could not brought to our knowledge any contrary decision. We, therefore, confirm the order of Ld. CIT(A) in deleting the reduction made by the AO in the deduction u/s 10B of the Act amounting to Rs.35,83,048/-. Thus, Ground no. 2 of the revenue stands dismissed.”

5.1 As Ld. DR has not pointed any difference in facts and law as relied in assessee's case in AY 2008-09, respectfully following the same the ground is decided in favour of the assessee.

6. Further in **ITA No.6178/Del/2014** for AY 2010-11 the ground no. 1, 1.2 and 2 and in **ITA No. 3381/Del/2016** for AY 2011-12 the ground no 1 are common to this ground accordingly same are also decided in favour of assessee.

7. **Ground no. 2.** The ground arises out of unrealized export proceeds in respect of unit in SEZ and the consequent reduction. Ld. AO has made the reduction alleging that the export proceeds have not been received within prescribed time limit laid under sub section 3(A) of Section 10A of the Act. Ld. AR has submitted that the Master Circular issued by the Reserve Bank of India in regard to export made by a SEZ unit provide that no time limit has been prescribed for such units. It was submitted that Ld. CIT(A) should have considered the Master circular. It was further submitted that the amount of export proceeds Rs. 1,90,30,863/- was realized by 19.02.2010 and the amendment brought with effect from 10.02.2006 introduced section 10A(7B) excluding SEZ units from Section 10A of the Act and the SEZ units are covered u/s 10AA wherein there is no time limit for inward remittance.

8. In regard to this issue it can be observed that the copy of Master Circular available at page no. 414 of the paper book shows that the 1st July, 2008 Master Circular no. 09/2008-09 of the RBI provides that in case of

units in the Special Economic Zone there is no specific time period for realization and repatriation of export proceeds. Ld. CIT(A) has not followed the same with observation in para 4.4.2 that the Master Circular is effective from 01.07.2009, therefore, the same is applicable for the exports made on or after 01.07.2009. The same are not applicable to export made by the SEZ unit in the financial year 2008-09. It appears that Ld. CIT(A) has taken into consideration Master Circular dated 01.07.2009 which is available at page no. 210 to 219 with relevant page at 218 while the Circular dated 1st July, 2008 was applicable in regard to present assessment year.

8.1 As the Bench goes through two circulars it comes up that both had a sunset clause of one year and after 1st July, 2008 Circular, on similar basis and extending benefit, the circular of 1st July, 2009 was issued. Thus, Ld. CIT(A) has fallen in error not following the circular dated 01.07.2008, as was applicable.

9. Even otherwise Ld. AR is justified with argument that in regard to relevant assessment year after coming into force of Special Economic Zone Act, 2005 with effect from 10.02.2006 provisions of Section 10AA of the Act are applicable and unlike Section 10A(3) which provides time limit of inward remittance of 6 months from the end of previous year, is not applicable to Section 10AA. Similar has been the view of the co-ordinate Bench in the case of **BT e-Serve (India) Private Limited vs. ITO, ITA no. 565/Del/2015 order dated 30.10.2017** wherein para 26 it has been observed that provisions of Section 10AA does not provide any time limit of bringing such consideration into Section 10A(3). Thus, the Bench is inclined to decide this **ground in favour of the assessee.**

9.1 Further in **ITA No. 3381/Del/2016** for AY 2011-12 the ground no 2 is common to this ground accordingly same is also decided in favour of assessee.

10. **Ground no. 2.1.** The ground arises out of the addition made by the Ld. AO by reducing the deduction u/s 10B of the Act. Ld. AR has pointed out that firstly there is the mistake of arithmetic nature as Ld. CIT(A) has confirmed the addition in respect of Rs. 5,58,854/- plus Rs. 6,42,083/- aggregating Rs. 12,00,957/- while the amount, if to be disallowed even, is only Rs. 6,42,083/- as Rs. 5,58,854/- is included in Rs. 6,42,083/-. This aspect was not disputed by Ld. DR.

10.1 Ld. AR has further pointed out that the entire amount has been received as established from the page no. 562 of the paper book no. II where assessee has provided the realization details of export proceeds pending as on 30th September, 2009. Ld. CIT(A) not relying the RBI Circular dated 01.07.2009 had sustained the disallowance of deduction u/s 10B. The Master Circular provided that in respect of exports made by EOU units the realization of export proceeds has to be within 12 months from the respective date of exports and the fact which was required to be verify by Ld. AO, in fact stood established and no inquiry was accordingly required. Accordingly, this **ground is decided in favour** of assessee.

11. **Ground no. 3.** Ld. AO has disallowed 20% of the foreign travel expenses by categorizing that as personal expenses. Ld. CIT(A) allowed expenses of air tickets and of hotels, but confirmed personal at 30% of expenses against foreign currency and credit cards. Ld. AO pointed out that as the provisions of fringe benefit tax are applicable there can be no disallowance on account of personal expenses. The matter is covered in favour of the assessee in A.Y. 2008-09 wherein para 15 it has been observed as follows ;

“15. Ground No.4 in assessee's appeal as well as in revenue's appeal related to the reducing and sustenance of the disallowance out of the foreign travel expenses. The facts

relating to this ground are that the AO disallowed 20% of Rs. 16,76,438/- claimed by the assessee as foreign travel expenses. When the matter went before the Ld. CIT(A) but Ld. CIT(A) restricted the disallowance to 30% of the expenses against foreign currency and credit cards i.e. to Rs.11,55,832/-. Both the assessee as well as revenue has come in appeal.

16. We heard the rival submissions and carefully considered the same. We noted that the disallowance was made by the AO and sustained by the Ld. CIT(A) partly on the basis of the expenses incurred for personal purposes. It is not denied that the assessee has paid fringe benefit tax on these expenses. Since fringe benefit tax has been paid, therefore, no disallowance can be made on account of the personal expenses. Our aforesaid view is duly supported by the decision of Delhi Bench of this Tribunal in ITA No.805/Del/2013 for AY 2009-10 in the case of Aero Enterprises. No contrary decision has been brought to our knowledge even though the provision of section 115W is clear in this regard. We therefore, delete the disallowance of Rs. 11,55,832/-. Thus, Ground No. 4 raised by the assessee is allowed while ground no. 4 taken by the revenue stands dismissed.”

11.1 As Ld. DR has not pointed any difference in facts and law as relied in assessee’s case in AY 2008-09, respectfully following the same the ground is decided in favour of the assessee.

12. **Ground no. 4.** The ground arises from the disallowance of the claim amount paid Employees State Insurance Corporation. Ld. AR pointed out that it was wrongly debited as penalty. In regard to this it was submitted that the amount is not hit by Explanation 1 to Section 37 of the Act as the expenditure is not incurred arising out of any offence or anything which is prohibited by law. Ld. CIT(A) has observed that as the interest amount was penal in nature, same was not allowable. The Bench is of considered view that the demand was raised by ESIC on account of short deposits made by the company. The same does not arise out of any breach of law or anything

which was prohibited under law. The ground is sustained in favour of assessee.

13. In regard to **ITA no. 3381/Del/2016**, A.Y. 2011-12, Ld. AR has submitted that ground no. 1.1, 4 and 5 are not pressed. Accordingly, the same are dismissed.

14. As with regard to remaining ground no. 3. Ld. AR has pointed out that the annual accounts for the relevant assessment year are available at page no. 389 to 441 and details of investments in Schedule 7 are provided at page no. 400-401. Total investment as at the end of relevant previous year amounting to Rs. 10,00,00,000/- was in SBI fund Growth fund. Ld. AR pointed out that assessee has interest free funds of Rs. 531.63 crores at the end of relevant previous year and Rs. 456.60 crores as at the beginning of the relevant previous year and the same far exceed the aggregate amount of investments of Rs. 63.10 crores at the end of year. He also pointed out that pending investment as on 01.04.2010 was 65.3312 crores and the closing balance as on 31.03.2011 was Rs. 63.1058 crores. Hence, the investments in fact have decreased in comparison to its net income of Rs. 40.79 crores. These, facts could not be disputed by Ld. DR.

15. The settled proposition of law is that the hotch potch fund theory relied by Ld. CIT(A) is no more relevant and if interest free own funds are available with assessee it is presumed that investments were made out of the same and proportionate disallowance is not warranted u/s 14A of the Act. Reliance can be placed on the judgment of Hon'ble Supreme Court of India in the case of **South Indian Bank Ltd. 130 taxman.com 178(SC) 128** and **CIT vs. Reliance Utilities & Power Ltd. (2009) 178 taxman 135 (Bombay)**. Hence, the findings of Ld. CIT(A) in regard to this ground cannot be sustained and the ground no. 3 is decided in favour of assessee.

16. In regard to ITA no. **1678/Del/2014** for A.Y. 2010-11, Ld. AR has stated at Bar not pressing ground no. 1.1. Accordingly, **the same is dismissed.**

17. As a consequence of aforesaid discussion, **the appeals of assessee qua the grounds argued stand allowed in favour of the assessee and the Appeals are allowed.**

Order pronounced in the open court on 21st August, 2023.

Sd/-

**(N.K.BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-21.08.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI