

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

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

ITA No. 2690/Del/2014
Asstt. Year: 2009-10

M/s Rana Bar P. Ltd. B-5, Tagore Market, Kirti Nagar, New Delhi PAN AABCR9085Q	Vs.	Income Tax Officer, Ward 15(2), New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ankit Gupta, Advocate
Department by :	Shri P.N. Barnwal, CIT-DR
Date of Hearing	06/12/2023
Date of pronouncement	06/12/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 28.02.2014 of the Ld. Commissioner of Income Tax (Appeals) XVIII, New Delhi (**"CIT(A)"**) pertaining to the Assessment Year (**"AY"**) 2009-10.

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

"1. The assessment made U/s 143(3) and the additions/disallowance made by the Assessing Officer are illegal, bad in law & without jurisdiction.

2. The addition/ disallowances made by the assessing officer are illegal, unjust, highly excessive and are not based on any material on record by the assessing officer. The total income of the appellant has

been wrongly and illegally computed by the assessing officer at Rs. 12,11,00,000/- as against declared NIL income.

3. That in view of the facts and circumstances of the case erred on facts, the CIT(A) has erred on facts and in law in upholding the action of the AO in rejecting the books of accounts without pointing out any error in the regular books of account maintained by the appellant. In any case the books have been illegally and wrongly rejected and the said rejections of books of account cannot be justified by any material on record.

4. The AO/ CIT(A) has erred in fact and in law in treating the Cash Sales as income from other sources and also erred in not allowing deduction U/s 80IC to the appellant.

5. That in view of the facts and circumstances of the case CIT(A) erred on facts and in law in uphold the action of the assessing officer in not allowing the deduction U/s 80IC. The CIT(A) has also failed to appreciate that the appellant has fulfilled all the condition of the said section and the deduction U/s 801C is allowable out of profits of eligible unit.

6. The CIT(A), in view of the facts and circumstances of the case erred on facts and in law in uphold the additions of Rs. 12,11,00,000/- u/s 68 in respect of cash sales proceeds deposited in the bank account. He has also erred on facts and in law in disallowing the cash sales and recasting the trading account.

7. The additions/ disallowances made are unjust, unlawful, without jurisdiction and are also highly excessive. The CIT(A) has wrongly & illegally upheld the addition of Rs. 12,11,00,000/-.

8. The CIT(A) has, in view of the facts and circumstances of the case erred on facts and in law in upholding the disallowing the sum of Rs. 10,29,197/- u/s 14A r.w.r. 8D made by AO.

9. The CIT(A) has, in view and circumstances of the case, erred in upholding the order of the assessing officer without giving proper opportunity of hearing to the appellant, which is illegal, bad in law and against the principle of natural justice.

10. *The additions made and the observations made are unjust, unlawful and based on mere surmises and conjectures. The additions made cannot be justified by any material on record.*

11. *That the explanation given evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/ allowances made.*

12. *That the impugned Assessment Order passed by the Assessing Officer is against the principles of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.*

13. *That the interest u/s 234A, 234B, 234C & 234D has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax. The interest charged under various sections is also wrongly worked out.*

14. *The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.*

All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.”

3. Briefly stated, the assessee company is in the business of manufacturing and trading of M.S. Angle, Chanel, Girder and T Iron and Rectangle Bars and other sections and M.S. Inglots. It filed its return for AY 2009-10 on 29.09.2009 declaring Nil income. The case was selected for scrutiny. Statutory notice(s) were issued/served upon the assessee. During the year the assessee claimed deduction under section 80IC of the Income Tax Act, 1961 (**the “Act”**) of Rs. 51,55,396/- @ 30% of the Gross total income. The Ld. Assessing Officer (**“AO”**) required the assessee to justify its claim. The assessee filed replies but the Ld. AO was not satisfied and computed profit of eligible unit at Haridwar at negative figure of Rs. 96,95,2254/- and denied the assessee’s claim of deduction under section 80IC, there being loss from the eligible unit. The Ld. AO further held that

source of cash deposits, claimed to be sales made in cash, in assessee's bank account remained unexplained and hence added Rs. 12,11,00,000/- to the income of the assessee under section 68 of the Act. The Ld. AO disallowed Rs. 10,29,197/- under section 14A of the Act. The assessment was accordingly completed on 26.11.2011 under section 143(3) of the Act.

4. The assessee appealed before the Ld. CIT(A) but without success. This has brought the assessee before the Tribunal and all the grounds of appeal relate thereto.

5. We have heard the Ld. Representative of the parties, considered their arguments and perused the records.

6. Ground No. 1, 2, 9, 10, 11 and 12 are general in nature and do not require separate adjudication. Ground No. 13 relates to charging of interest under section 234A, 234B, 234C and 234D which is consequential. The remaining grounds are being adjudicated herein below.

7. Ground No. 3 relates to rejection of books of account by the Ld. AO under section 145(3) of the Act which has been upheld by the Ld. CIT(A). The grievance of the assessee is that during assessment proceedings the assessee produced book of account being cash book, stock register, sale and purchase registers, purchase, sale invoices etc. in support of the cash deposits in the bank account which was examined by the Ld. AO who rejected the books of account without pointing out any error in the regular books of account maintained by the assessee. The Ld. CIT-DR supported the orders of the Ld. AO/CIT(A).

8. We have considered the rival submissions. It is not in dispute that the assessee has maintained books of account on the day-to-day basis and audited balance sheet, profit and loss account and tax audit reports which were produced during assessment proceedings. It was also asserted that on

the issue of cash sales the books of account cannot be rejected. In support, certain case laws were also relied upon. There is no whisper that the Ld. AO detected any flaw in the maintenance of regular books of account by the assessee. In the preceding AY 2008-09 also the Ld. AO had rejected the assessee's book of account under section 145(3) of the Act. When the matter was taken by the assessee before the Tribunal, the Tribunal adjudicated this issue in para 8 and 9 of its order in ITA No. 124/Del/2013 dated 12.08.2016 which we reproduce hereinbelow:-

“8. At the outset, we may point out that as per section 145(3) of the Act, the A.O is empowered to reject books of accounts of the assessee in certain conditions viz (1) where the A.O is not satisfied about the correctness or completeness of the accounts of the assessee or (11) wherein the method of accounting provided in sub-section (1) of section 145 of the Act has not been regularly followed by the assessee or the Id. CIT(A), (iii) Income has not been computed in accordance with the standards notified under sub section (2) of the said provision, then only the A.O may make assessment in the manner as provided in section 144 of the Act after rejecting ht books of accounts of the assessee.

9. In the present case, from the relevant operative para 3.1 and 4.1 of the A.O, we note that the A.O has not shown his intention by issuing any show cause to the assessee before rejecting the books of accounts We also observe that the A. O has not levelled any allegation, as per mandate of section 145(3) of the Act, to establish that any of the conditions therein has been found in the case of the assessee validly enabling the A.O to reject the books of accounts of the assessee Since books of accounts have been rejected without following due procedure as mandated by Section 145(3) of the Act and without affording due opportunity of hearing to the assessee. Thus, conclusion of the authorities below in rejecting books of accounts is set aside and this issue is returned to the file of the A.O for afresh adjudication after allowing opportunity of being heard for the assessee. Accordingly, by this ground of the assessee is allowed for statistical purposes.”

9. The facts and circumstances remaining the same for the year under consideration, following the decision (supra) of the Tribunal, we restore the issue of rejection of books of account to the file of the Ld. AO for fresh

adjudication after allowing adequate opportunity of hearing to the assessee. We, treat this ground of the assessee as allowed for statistical purposes.

10. Ground No. 4 and 5 relate to deduction under section 80IC of the Act which has been denied by the Ld. AO and the Ld. CIT(A) upheld his action in doing so. The case of the assessee has been that it has fulfilled the requisite conditions prescribed under section 80IC of the Act. Therefore, the deduction under section 80IC of the Act is allowable out of profits of eligible unit. Reason for denial of the impugned deduction is that the Ld. AO treated the cash sales as income from other sources and disallowed the claim of the assessee. The Ld. CIT-DR relied on the orders of the Ld. AO/CIT(A).

11. The same issue arose for consideration before the Tribunal in assessee's appeal for AY 2008-09 and the Tribunal in its order (supra) in paras 11 to 13 dealt with it as under:-

“11. Next question posed to us for adjudication is that whether the A.O was justified in denying deduction u/s 80-IC of the Act pertaining to cash sales treating the same as income from other sources. The Id. AR pointed out that there is no condition in the Act that the assessee would not be eligible for deduction on cash sales. The Id. AR vehemently pointed out that the A.O regularly allowed deduction u/s BOIC of the Act on both kinds of sales either cash or credit and there is no valid reason to deny the same only on the cash sales for the period under consideration. The ld. AR also showed us details and particulars showing that the cash and credit sales for all purposes, including deduction u/s 80IC of the Act have been accepted in earlier years from A.Y 2005-06 to 2007-08 and also in the subsequent years. i.e from A.Y 2010-11 to 2013-14 and also filed copies of assessment orders framed u/s 143(3) of the Act for A.Y 2010-11, 2011-12 and 2013-14 to show that there was credit and huge cash sales in earlier and subsequent A.Ys and deduction u/s 80IC of the Act has been consistently and regularly allowed to the assessee without any dispute regarding cash sales.

12. The Ld. counsel of the Revenue strongly supported the action of the A.O as well as the order of the ld. CIT(A).

13. *On careful consideration of the rival submissions, we are of the view that from para 4.2 of the assessment order, it is clear that the A.O firstly held that the sales have been inflated in order to claim deduction u/s 80IC of the Act. Thereafter, in the subsequent part, the A.O also held that the assessee has not been able to explain the source of cash deposits in his bank account of Rs. 7,77,86,000/- and he added the same u/s 68 of the Act as unexplained and consequently, he dismissed claim of deduction u/ 80IC of the Act on this amount i.e. Rs. 7,77,86,000/-. Since by the earlier part of the order we have held that the rejection of books of accounts was not in accordance with the provisions of section 145(3) of the Act, thus the impugned cash sales cannot be treated as income from other sources and deduction u/s 801C of the Act cannot be denied on the amount of such cash sales. However, we cannot ignore that the A.O had no occasion to examine the details and documents filed by the assessee at pages 121 to 125 and 190 to 197. Consequently, the action of the A.O in rejecting the books of accounts and treating cash sales as income from other sources and denying deduction u/s 80IC of the Act is set aside and the A:O is directed to examine and verify the claim of the assessee regarding cash sales, for deduction u/s 801C of the Act. We also direct the A.O to verify and examine the cash sales in the light of commercial tax payment, raw material consumed and stock register verification, any, after considering the submissions of the assessee and alter providing due opportunity of hearing for the assessee. With these directions, Ground Nos. 1 to 5 of the assessee are allowed for statistical purposes.”*

12. Following respectfully the reasonings recorded by the Tribunal, we set aside this issue and restore it to the file of the Ld. AO for verification of the assessee's claim in the light of the directions contained in para 13 of the Tribunal's order (supra). Ground No. 4 and 5 of the assessee are treated as allowed for statistical purposes.

13. Ground No. 6 and 7 relate to addition of Rs.12,11,00,000/- under section 68 of the Act. The Ld. AO discussed the issue of cash deposits in bank account in para 4.1 of the assessment order and arrived at the conclusion in para 5.1 that the assessee has not been able to explain the source of cash deposits in its bank account and made the impugned

addition holding that the said cash deposits remained unexplained. The Ld. CIT(A) concurred with the findings of the Ld. AO.

14. The Ld. AR invited our attention to the details of month-wise sales (copy at pages 43-71 of Paper Book) and comparative chart of credit sales and cash sales for FY 2006-07, 2007-08 and 2008-09 at page 72 of Paper Book. He also referred to the summary of cash deposit and withdrawal in the bank accounts during the FY 2008-09 (copy at page 73 of the Paper Book) as also details of product-wise sales and production which appear at pages 74-80 of the Paper Book. The Ld. AR pointed out that it was submitted before the Ld. CIT(A) that the impugned amount represents payments received against cash sales. These have already been declared as income in trading account by way of receipts and included in total sales of Rs. 47.60 crores. He, therefore, argued that the impugned addition is totally unjustified. The Ld. CIT-DR relied on the findings of the Ld. AO/CIT(A).

15. Similar addition was made in the immediately preceding year. When the matter reached the Tribunal, the Tribunal in its order (supra) recorded the following findings:

“17. On careful consideration of above, at the outset, we observe that the authorities below categorically noted that the assessee did not submit copy of bank statement with HDFC Bank with which the impugned proceeds of cash sales was deposited. Per contra, it is contended by the Id. Counsel of the assessee that the assessee submitted all relevant documents including copy of the bank statement with HDFC bank during assessment proceedings. Further move the impugned cash sales can be verified from the respective purchasers and other related offices including the commercial tax deptt. The disallowance of cash sales and not treating the amount 2% of total sales as income from eligible unit have been made without considering the entire relevant evidence and explanation of the assessee and the Issue of cash sales detailed verification and examination of all related documentary and circumstantial evidence. The AO shall also consider the percentage of the consumption of fuel and raw materials in proposition to finished goods and will also take into consideration the percentage of gross profit ratio of other similar unit, if any, in the similar factual conditions. We may point out that without considering the relevant evidence, details and explanation alongwith earlier and subsequent year financial results and GP ratio

of the assessee and similar unit in cannot make disallowance and addition and it is also on the assessee to justify and explain the situations wherein huge cash sales was made and cash was deposited to bank account which is 40 KM away from the office of the assessee. The assessee may also submit all other relevant details pertaining to transportation, commercial tax payment and purchasers to establish its claim of cash sales. With these directions issue involved in ground nos. 6 to 9 of the assessee are restored to the file of the AO for de novo adjudication. The AO is also directed to adjudicate the same after affording due opportunity of hearing to the assessee and without being prejudiced from the earlier assessment and impugned first appellate order of the CIT(A). Accordingly, ground Nos. 6 to 9 of the appeal of the assessee are allowed for statistical purposes.”

16. We agree that the matter needs to be looked into afresh. We, therefore, set aside this issue and restore it to the file of the Ld. AO to adjudicate it denovo keeping in view, the directions contained in Tribunal’s order (supra) after allowing adequate opportunity of being heard to the assessee. We order accordingly. We treat Ground No. 6 and 7 as allowed for statistical purposes.

17. Ground No. 8 relates to disallowance of Rs. 10,29,197/- under section 14A r.w. Rule 8D. The Ld. AO discussed this issue in para 7 of the assessment order. He found that the assessee has shown investment during the year of Rs. 2,50,00,000/-. According to him after insertion of Rule 8D r.w. section 14A calculation of expenses for earning dividend is compulsory. Accordingly, he calculated expenditure for earning dividend income at Rs. 10,29,197/- which he disallowed. The Ld. CIT(A) confirmed the disallowance. This has brought the assessee before the Tribunal.

18. The Ld. AR submitted that during the year the assessee did not earn any exempt income. Moreover, it was brought to the notice of the Ld. CIT(A) (page 34-35 of Paper Book) that the assessee had surplus funds in the Reserve as per balance sheet for the investment. The opening balance of Reserves and Surplus amounted to Rs. 10,53,95,728/-. It was also submitted that the borrowed funds from the banks were term loans taken

for specific purpose and the cash credit limit was used for meeting working capital requirements of the assessee. The assessee relied upon some precedents. Nothing was convincing to the Ld. CIT(A). The Ld. CIT-DR supported the orders of Ld. AO/CIT(A).

19. We have considered the rival submissions. Identical disallowance was made in the preceding year as well. Last year also the claim of the assessee was that it did not earn any exempt income. On these facts the Tribunal in its order (supra) held that the ratio of decision of Hon'ble Delhi High Court in Cheminvest Ltd. vs. CIT in ITA No. 749/2014 dated 02.09.2015 squarely applies. Since the Ld. AO has not verified the factum of non-earning of any exempt income during the year, we are of the view that the matter may go back to the Ld. AO for necessary verification. If on verification, the claim of the assessee is found to be correct, then let the Ld. AO apply the ratio of decision in Cheminvest Ltd. (supra) and allow the relief. We order accordingly. For statistical purposes, Ground No. 8 is treated as allowed.

20. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 6th December, 2023.

Sd/-

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

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMEBR**

Dated: 06/12/2023
Veena

Copy forwarded to-

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

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	