

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 2800/MUM/2003 (A.Y: 1998-99)

M/s. Marico Industries Ltd., Rang Sharda K.C. Marg, Bandra (W) Mumbai - 400050 PAN: AAACM7493G	v.	DCIT – Central Circle – 35 Bandra Kurla Complex Bandra, Mumbai - 400035
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Nitesh Joshi
Department Represented by	:	Shri Ashok Kumar Ambastha
Date of conclusion of Hearing	:	11.03.2024
Date of Pronouncement	:	03.04.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), Central – VI, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 19.12.2002 for the A.Y.1998-99.

2. Assessee has raised following grounds in its appeal: -

"1. Learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.2,30,800 being 5% of the expenses of Rs.46,16,000 incurred on recreation expenses, picnic, sport etc. and other Miscellaneous Expenses included in Staff Welfare Expenses on the ground that in the preceding year disallowance of 5% has been confirmed by the Commissioner of Income tax (Appeals). The disallowance in the earlier year having been confirmed on the ground that portion of the expenses on staff welfare was in the nature of entertainment expenses disallowable u/s 37(2A) of the Act, the section 37(2A) having been deleted with effect from A. Y. 98-99, the disallowance ought to be deleted.

2. Learned Commissioner of Income Tax (Appeals) has erred in confirming that while computing deduction u/s 80IA following expenses are allocable to Kanjikode and Goa Unit.

a. Rs.995.18 Lacs out of Corporate Office Expenses

b. Rs.43.30 Lacs out of Corporate Advertisement Expenses and

c. Rs. 132.48 Lacs out of Head Office Depreciation.

On the facts and in the circumstances of the case, he ought to have held that the aforesaid expenses are not to be allocated while working out the profits of Goa and Kanjikode undertakings for the purpose of deduction u/s.80IA of the

Without prejudice to the above, the Learned Commissioner of Income Tax (Appeals) erred in holding that the proper method of allocating the expenditure would be on the basis of the turnover. The Learned Commissioner of Income Tax (Appeals) ought to have held that only the incremental expenses incurred after Goa and Kanjikode undertakings came into operation ought to be considered for allocation to the respective undertaking.

3. Learned Commissioner of Income Tax (Appeals) has erred in holding that interest of Rs.10.37 Lacs is allocable to the Goa Undertaking. He ought to have held that no part of aforesaid interest ought to be allocated to the Goa Undertaking while working out the profits of the Goa Undertaking for the purpose of deduction u/s.80 IA of the Act.

Without prejudice to the above Learned Commissioner of Income Tax (Appeals) has erred in holding that the deficit in the working capital cannot be worked out considering the ratio of borrowings of the assessee with the investment in current assets or the ratio of the borrowed funds to the own funds. He ought to have computed interest on working capital deficit after excluding proportionate capital and reserves as being financed out of assessee's own funds."

3. We proceed to adjudicate the issues raised by the assessee in ground wise.

4. Brief facts of the case are, assessee filed its return of income on 30.11.1997 declaring total income at ₹.1508.80 lacs. The return was filed along with Tax Audit Report in Form No.3CD and audited profit and loss account and balance sheet. The assessee has filed revised computation of income on 31.03.2000 declaring total taxable income of ₹.1927.91 lacs. In the revised computation, assessee has added back provisions of advertisement and sales promotion expenses of ₹.364.74 lacs and reduced the 80IA deduction to ₹.1816.31 lacs as against the original deduction of ₹.1951.62 lacs. Accordingly, the return was processed under section 143(1)(a) of Income-tax Act, 1961 (in short "Act") without any adjustments. The case was selected for scrutiny and notice u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response, Authorised Representative of the assessee attended from time to time and submitted the relevant information as called for.

5. The assessee is a manufacturer of various consumer products being sold in the market in the brand name of Parachute, Hair & Care,

Saffola, Sweekar and Sil. It has the manufacturing units at Kanjikode (KKD), Goa, Jalgaon and Sewree. The head office and the corporate office of the assessee is at Bandra(W), Mumbai. The manufacturing units at KKD and Goa are eligible for deduction under section 80IA of the Act @30% and 100% respectively.

6. With regard to Ground No. 1 raised by the assessee, which is in respect of adhoc disallowance of staff welfare expenses, the relevant facts are, the Assessing Officer observed that assessee has claimed welfare expenses of ₹.170.30 lacs. It has filed the details of welfare expenses vide letter dated 21.12.2000 from which it was observed that the assessee has debited an amount of ₹.46,16,000/- on lunch, refreshment, tea, coffee etc. The Assessing Officer treated 10% of this expenses amounting to ₹.4,61,600/- is treated as not wholly and exclusively laid out for the purposes of business. Assessing Officer relied on the decision of Hon'ble Supreme Court in the case of L.H.Sugar Factory and Oil Mills Pvt. Ltd. v. CIT [125 ITR 293]. The Assessing Officer held that the onus is on assessee to bring all material facts on record to substantiate its claim. Accordingly, he held assessee has failed to do so, an amount of ₹.4,61,600/- is disallowed under section 37(1) of the Act and added to the total income of the assessee.

7. Aggrieved, assessee preferred appeal before Ld. CIT(A). Ld.CIT(A) after considering the submissions of the assessee, he relied on the decision of preceding year FAA order in which disallowance was confirmed @5%. Accordingly, he confirmed the addition @5% i.e., ₹.2,30,800/-.

8. Aggrieved, assessee is in appeal before us raising present grounds of appeal.

9. At the time of hearing, Ld.AR of the assessee brought to our notice relevant facts of the issue raised by the assessee and submitted that Ld. CIT(A) has relied on the findings of the First Appellate Authority order in the preceding assessment year and he submitted that in the preceding assessment year the issue was relating to entertainment expenditure incurred by the assessee. He submitted that w.e.f. 01.04.1998 the issue of entertainment expenditure was omitted by the Finance Act, 1997, for the current assessment year the issue of disallowance of entertainment expenditure does not exist. He submitted that the Assessing Officer and Ld. CIT(A) has continued to follow the preceding assessment year order and disallowed certain percentage of expenditure. Therefore, he submitted that the Assessing Officer cannot

disallow the expenditure on adhoc basis. He brought to our notice the proceedings of the preceding assessment year i.e., 1997-98 which involves the issue of entertainment expenditure [ITA No. 8858/MUM/2011]. He prayed that the direction may be given to the Assessing Officer to allow the expenditure claimed by the assessee.

10. On the other hand, Ld. DR submitted that assessee has not filed any details before Assessing Officer and in fact Assessing Officer has called for the details for the above expenditure and assessee has not furnished them. He brought to our notice Para No. 3 of the Assessment Order and further, he submitted that the disallowance made by the Assessing Officer under section 37(1) not under section 37(2) of the Act. Therefore, the submissions of the assessee cannot be accepted.

11. Considered the rival submissions and material placed on record, we observe that during the current assessment year assessee has incurred an expenditure on staff welfare like lunch, refreshment, tea, coffee etc., and the Assessing Officer chose to disallow 10% of the above expenditure as not substantiated by the assessee during assessment proceedings. We observe from the record that Assessing Officer followed similar pattern of disallowance from the preceding

assessment years and also Ld. CIT(A) has followed the same by restricting the disallowance @5% relying on the order of preceding assessment year. It is rightly brought to our notice by the Ld.AR of the assessee that in the preceding assessment year there was a specific section under section 37(2) of the Act to disallow the entertainment expenditures incurred by the assessee. Since section 37(2) was omitted from the A.Y. 1998-99, the expenditure on the welfare of the employees is recognized as an allowable expenditure. Therefore, the expenses incurred by the assessee on the welfare of the employees are allowed as expenditure. Since the expenditure incurred are relating to lunch, refreshment, tea, coffee etc., which was also confirmed by the Assessing Officer, therefore, this expenditure is purely relating to refreshment expenditure incurred by the assessee for the benefit of the employees. Therefore, in our view, this expenditure is incurred wholly for the purpose business and Assessing Officer cannot resort to disallow certain expenditure on adhoc basis. Accordingly, we direct the Assessing Officer to allow the expenses incurred by the assessee for the benefit and welfare of the employees. Accordingly, Ground No. 1 raised by the assessee is allowed.

12. With regard to Ground No. 2 relating to computation of deduction under section 80IA and relevant allocation of Corporate office, Corporate advertisement and Head office depreciation are concerned, the relevant facts relating to this ground are, during the course of assessment proceedings Assessing Officer observed from the revised computation of income filed on 31.03.2000 that the assessee has claimed deduction under section 80HHC of ₹.89.90 lacs. The above deduction is claimed on the total turnover of ₹.49002.40 lacs and export turnover of ₹.1170.43 lacs. Further, Assessing Officer observed that while calculating the deduction under section 80IA of the Act, assessee has not proportionately allocated expenses on various account like corporate office, advertising and sales promotion, depreciation and interest to its KKD Unit and Goa Unit. He observed that these two units manufacture coconut oil of parachute brand and are eligible for deduction under section 80IA of the Act. The KKD unit is eligible for deduction @30% and the Goa unit @100% of their profit respectively.

13. The Assessing Officer taking lead from the assessment made under section 158BC of the Act in which deduction under section 80IA of the Act on account of non-allocation of the above expenses to the KKD unit which was eligible for deduction under section 80IA of the Act and

the disallowance of deduction under section 80IA and consequent additions made were on the basis of allocation of the above expenses in the ratio of turnover of parachute sales to the total turnover of the company. The same was confirmed by the CIT(A) in its order and the Assessing Officer observed that Goa unit was commenced its production during the current assessment year and eligible for deduction under section 80IA of the Act @ 100% of the profit from this assessment year.

14. Taking Queue from the above observations, Assessing Officer observed that assessee has not proportionately allocated the Head Office expenses, advertisement and sales promotion expenses, head office depreciation and finance/interest cost while arriving at the profit of the KKD and Gao units. Non-allocation of the above expenses has reduced the expenses of these units and thereby increased their profits on which the assessee claimed 80IA deduction @30% for KKD Unit and 100% for Gao Unit. Accordingly, assessee was asked to explain why the expenses under the above heads should not be allocated to the KKD and Goa Units.

15. In response, assessee vide its letter dtd. 19.01.2000 has stated that the company had manufacturing facility at Sweree, Mumbai for

manufacture of Parachute Coconut Oil before setting up of new units at KKD and Goa. No separate establishment was set up for catering to KKD and Goa unit. Therefore, no substantial incremental expenses in the nature of establishment expenses has been incurred by the company for setting up of the KKD and Goa unit. It also submitted that it has considered all the expenses incurred at KKD and Goa unit under the relevant heads fully. It further argued that the corporate/ head office was in existence before the above units were commissioned. The expenses of corporate office are in nature of fixed costs which do not directly depend on any of the undertakings of the company and do not depend on the operations of the unit or for that matter, any other undertaking of the company. It also stated that the ITAT decisions in the case of Food Specialties Ltd. And TATA Unysis Ltd. does not apply to the facts of the case. Without prejudice to the above, it was stated that it has already allocated corporate office, expenses for KKD and Goa unit in the revised return based on the decision of Hon'ble ITAT in the case of Food Specialties Ltd. Therefore, it was submitted that no further disallowances under section 80IA are required to be made.

16. After considering the submissions of the assessee, Assessing Officer rejected the same observing that the issue under consideration

was dealt at length in the order passed for the block period in the case of the assessee and it was held in the above said block period assessment that the expenses are to be allocated on the basis of turnover of these units to the total turnover of the company. The Assessing Officer observed that the same was confirmed by the CIT(A) in its order. The same was reproduced by the Assessing Officer in his order at Page No. 5 of the order. The decision of the CIT(A) was wholly depend on the decision of the ITAT in the case of Foods Specialties *v.* DCIT [54 ITD 352]. By relying on the above decision it was held that the allocation has to be made depending on the nature of business carried out by the assessee as well as the dependence of the branches of the cooperate office. In the instant case, the entire sequence of events starting from the setting up of the unit to the subsequent business activities like purchases, sales, packaging, distribution, product design, advertisement and sales promotion are controlled by the head office. Since the corporate office incurred all the expenses before the commencement of the production, it was observed that it is wrong to take the incremental expenses because this can be related only to the year when production started and for subsequent period. Therefore, it is natural that the basis of turnover and turnover only would be the proper and most reasonable basis while determining the expenses attributable

to the Kanjikode unit. Accordingly, Assessing Officer rejected the submissions of the assessee and proceeded to allocate head office, advertisement and sales promotion, depreciation of KKD Unit and Goa Unit to the total turnover by adopting the turnover ratio the Assessing Officer has reworked the allowable deduction under section 80IA of the Act and reduced the deduction under section 80IA of the Act to the extent of ₹.1118.35 lacs.

17. Aggrieved, assessee preferred an appeal before Ld. CIT(A) and submitted before him that Assessing Officer erred in holding that a sum of ₹.995.18 lacs out of corporate office expenses, a sum of ₹.43.30 lacs out of corporate advertisement expenses and a sum of ₹.132.48 lacs out of head office depreciation are allocable to KKD Unit and Goa Unit. It was submitted that the expenses even if allocable should have been allocated on the incremental basis. After considering the above submissions of the assessee, Ld. CIT(A) observed that identical issue in the case of assessee has also been decided against the assessee at the stage of First Appellate Authority. Accordingly, the ground raised by the assessee is rejected.

18. Aggrieved, assessee is in appeal before us and at the time of hearing, Ld.AR of the assessee brought to our notice relevant facts of the case and submitted that assessee had set-up the Kanjikode Unit in the previous year relevant to the A.Y. 1994-95 for production of edible coconut oil which has been marketed under the brand name 'Parachute' coconut oil. The said unit qualifies for claiming deduction under section 80-IA of the Act. It is an admitted position that, for the year under consideration, the assessee was entitled to deduction @30% of the profits and gains derived from the said undertaking. Similarly, it has set-up the Goa unit again for manufacture of edible coconut oil to be marketed under the brand name parachute in the previous year relevant to the assessment year 1998-99 i.e., the year under consideration. In respect of this unit, the assessee is entitled to deduction under the said section @100% of the profits and gains derived from such undertaking.

19. In the original return of income filed by the assessee on 30.11.1998, it had claimed deduction under section 80-IA of the Act in respect of the Kanjikode unit at ₹.10.54 crore (**pages 8 to 15 of the Paper Book**) and the Goa unit at ₹.8.96 crore (**pages 16 to 23 of the paper book**) aggregating to ₹.19.51 crore (**page 6 of the paper book**). A bare perusal of the said working shows that-

a. the Assessee has worked out the profit eligible for deduction under the said section based on separate Financial Statements drawn for each of the Units, which, in turn has been prepared based on the separate books of account maintained for this purpose.

b. *Further, it has charged finance cost of Rs. 87.86 lakh in respect of specific term loan raised for the Kanjikode Unit (page 9 and Note No. 4 on page 13 of the Paper Book). In respect of the Goa Unit, it had allocated interest cost of Rs. 32.08 lakh (page 17 of the Paper Book). In this regard, in Note No. 4 on page 20, it has been clarified that, the Assessee has not taken any loan specifically for setting up the Goa Unit. The pro-rata interest cost had been allocated for the period till such time the surplus of the said unit was sufficient to meet the investment in the unit.*

c. *Apart therefrom, in the manufacturing and other expenses, it has included direct expenses relating to each of the undertakings and further allocated expenses by way of field-force cost, power fuel and water, rent and storage charges, repairs to building plant and machinery and others, freight and forward charges, rates and taxes, printing stationery and communication expenses, travelling conveyance and vehicles expenses, insurance and other miscellaneous expenses incurred at the depots which has been allocated over the various units in the proportion of sales (pages 14 and 15 for the Kanjikode Unit and pages 21 and 22 for the Goa Unit).*

d. *The advertisement and sales promotion expenses in relation to 'Parachute' coconut oil has been allocated to each of the said divisions manufacturing the same based on the proportion of their sales turnover to the aggregate turnover of Parachute coconut oil (page 14 for the Kanjikode Unit and page 21 for the Goa Unit). Advertisement and sales promotion expenses relating to other products marketed by the assessee and the corporate advertisement expenses have not been allocated to the Kanjikode and the Goa unit as they have no relevance to these units. This is because both these units are only engaged in manufacture of Parachute brand coconut oil.*

Emphasis has been laid on these aspects as, wherever necessary, the Appellant has already allocated a proportion of the expenditure.

20. Further, Ld.AR of the assessee submitted that in the assessment order, the Assessing Officer has relied upon the finding given by him in the block assessment order dated 31.12.1999 covering the period 13.10.1988 to 04.12.1997 allocating the corporate office expenses, depreciation relating thereto and corporate advertisement expenses to the Kanjikode and the Goa Unit (**paragraphs 8 to 13 at pages 3 to 6 of the assessment order**). The Ld.CIT(A) has upheld the same relying upon his appellate order for the block assessment period (**paragraphs 6 and 6.1 on page 2 of the Appellate order**). The block assessment order is at **pages 48 to 72 of the Paper book** where the relevant discussion on merits is at **pages 60 to 71** thereof. The appellate Order passed by the CIT(A) in the block assessment proceedings is at **pages 73 to 101** where the relevant discussion on merits is at **pages 91 to 97** thereof.

21. During the year under consideration, the assessee had manufacturing units at Sewree, Jalgaon, Kanjikode and Goa where it has been manufacturing various fast moving consumer products like Parachute coconut oil, Sweekar oil, Saffola oil, Revive starch, Hair &

Care hair oil. Apart therefrom, it had its corporate office at Rangsharda at Bandra in Mumbai. It is an undisputed position that, each manufacturing units have executives who are responsible for looking after the day to day operations of the respective units. For this purpose, these executives have an independent support team assisting them. Each undertaking including the Kanjikode unit and the Goa unit are maintaining its separate books of account. Apart from the expenditure directly attributable to each of the undertakings, **the assessee has also allocated expenditure in respect of power fuel and water, rent and storage charges, repairs to building plant and machinery and others, freight and forwarding charges, rates and taxes printing stationery and communication expenses, insurance and other miscellaneous expenses at the depots (pages 14 and 15 of the Paper Book for the Kanjikode unit and pages 21 and 22 for the Goa unit)**. The field force cost being the marketing related cost including salaries, wages, bonus, contribution to provident fund other funds and welfare expenses including travelling conveyance and vehicle expenses as relating to Parachute coconut oil has also been allocated to the Kanjikode and the Goa unit in the ratio of sales of these units to the total sale of Parachute coconut oil. Similar is the position with respect to advertisement and sales promotion expenses as relating to Parachute

coconut oil (**pages 14 and 15 for the Kanjikode unit and page 21 and 22 for the Goa unit**). Apart therefrom, the assessee has also allocated finance cost of ₹.87.86 lakh to the Kanjikode Unit (**page 9 and Note no. 4 on page 13 of the Paper book**) and ₹.32.08 lakh to the Goa Unit (**page 17 and Note no. 4 on page 20 of the Paper book**). Therefore, funds borrowed, though by the corporate office, to the extent relatable to each of the units have also been allocated by the assessee. This is based on the main claim as per the original return of income. The assessee submits that, in the facts of the present case, it was fully justified in making the aforesaid allocation and thereafter not allocating anything further from the corporate office expenses for the following reasons:-

"a. A bare perusal of section 80-IA(1) of the Act, as it stood prior to its amendment by the Finance Act, 1999 w.e.f. 01.04.2000 shows that in respect of profits and gains derived from the specified business an assessee would be entitled to deduction from its gross total income of an amount equal to such percentage from the said profits. Hence, the profits and gains which qualify for deduction under the said section has to qualify the condition relating to 'derived from'. It is well settled by now that the expression 'derived from' has to receive strict construction and the first-degree nexus has to be established for the income/expense to fulfill this condition. It is submitted that, the principles which are applicable to the receipts should be equally applied to the expenditure as profit is the difference between the receipt and the expenditure. It is further submitted that, applying this principle the corporate head office expenses which are general administrative expenses and having nothing to do with a particular unit cannot be regarded as having first degree nexus with the Kanjikode and the Goa unit.

b. *In the context of head office expenses, this position has been accepted by the following judgments (copy separately handed over at the time of hearing) :-*

- *CIT vs Hindustan Lever Limited (2014) 42 taxman.com 132(Mad);*
- *CIT vs Hindustan Unilever Limited (2017) 394 ITR 73(Bom)*
- *Zandu Pharmaceuticals Works Limited vs. CIT being order dated 12.09.2012 in Income-tax Appeal No.8 of 2007 which though was concerned with allocation of expenditure incurred towards research and development has enunciated the principle relating to 'derived from'*

in paragraphs 9 to 12 of the judgment, wherein, in paragraphs 9 and 10 thereof specific reference has been made to the head office expenses as an illustration of expenditure which would not fulfil this requirement. At the time of hearing, it was highlighted that there are various orders of the Tribunal taking a similar view. However, since the Hon'ble Bench did not want the authorities to be multiplied no reference thereto was made at the time of hearing as also in the present note.

22. Further, Ld.AR of the assessee submitted that for the assessment year 1995-96, the Assessing Officer had allocated advertisement and sales promotion expenses, packing material expenses, interest and miscellaneous expenses to the Kanjikode unit for determining the profits eligible for deduction under section 80-IA of the Act (**pages 109 to 116 of the Paper book**). When this issue reached the Tribunal, it has in principle accepted the legal position that before allocation, the expenditure should have the first-degree nexus with the concerned unit. In the absence of the relevant information, it has sent back the matter to the Assessing Officer for reconsideration insofar as miscellaneous

expenditure is concerned (**paragraph 21 at page 144 of the Paper book**). With respect to the advertisement and sales promotion expenses, packing material and finance cost it has accepted that no part of the said expenditure needs to be allocated to the eligible unit where they have upheld the finding given by the CIT(A) in this regard (paragraph 22 to 26 at pages 144 and 145 of the Paper Book). The conclusion reached by the Tribunal and the basis thereof supports the assessee's case for the year under consideration.

23. Further, Ld. AR of the assessee submitted that the breakup of the head office expenses of ₹.1,038.48 lakhs, as has been allocated by the AO and upheld by the CIT(A) is at page 31 as also page 36 of the Paper book. It is submitted that the said expenditure represents general administrative expenses and has no direct co-relation with the Kanjikode or the Goa unit. Further, the Kanjikode unit was set-up in the previous year relevant to assessment year 1994-95 when Sewree and Jalgaon units were already in operation. Similarly, the Goa unit was set-up in the previous year relevant to assessment year 1998-99 when the units at Kanjikode, Sewree and Jalgaon were already in operation. Therefore, the corporate office was in existence before the setting up of the Kanjikode unit or the Goa unit. It is not as if the corporate office has

come into existence with a view to enable smooth functioning of the aforesaid two units. Hence, no part of expenditure incurred at the corporate office could be allocated to the said two units for computing their profit and gains eligible for claiming deduction under the said section.

24. On the other hand, Ld. DR submitted that the issue of allocation of head office expenses are raised by the assessee every year and Ld.CIT(A) has passed detailed findings in A.Y.2000-2001. He brought to our notice Page No. 5 of the CIT(A) order [A.Y. 2000-2001] and he relied on the above findings.

25. Considered the rival submissions and material placed on record, we observe that the assessee has two units viz., KKD and GOA established to manufacture and sell the coconut oil with the brand name "Parachute". These units are eligible to claim deductions u/s 80IA. It is relevant to note that the KKD unit was established in AY 1994-95 and it is in operation and the GOA unit is established in the current AY.

26. Coming to the main issue, the deduction u/s 80IA has to be determined on the basis of standalone profit generated by the eligible

unit, which otherwise termed as derived from the eligible unit. Therefore, the profit generated by the unit has to be determined based on the concept of profit generated by the unit on the basis of revenue minus relevant cost involved to make the product marketable from the eligible unit. The above term cost involved to market the product includes material cost, manufacturing cost, factory maintenance cost, relevant finance and marketing cost. Beyond the above said cost will distort the mechanism of benefit intended to award by the legislature to encourage the manufacturing sector. Therefore, one has to review the cost of manufacture and other relevant cost holistically. The assessee has presented the unit wise financial data before the Assessing Officer to demonstrate the revenue and relevant cost which includes the relevant finance, advertisement on the basis of standalone unit. The issue raised by the revenue is to what extent the corporate office expenses, depreciation relating assets installed in the corporate office and corporate advertisement. After careful consideration, with regard to corporate advertisement we observe that the assessee has already allocated the direct advertisements to the respective units, the general advertisement expenses of the corporate advertisement cannot be once again allocated to the eligible units unless it is relating to the brand

“Parachute”. Other than that for the general advertisement, it need not allocate to the eligible unit.

27. With regard to corporate expenses and depreciation relating to the assets installed at the corporate office, as discussed earlier these costs are not directly relating to the operation of eligible units. As per the provisions of section 80IA, income has to be derived from the eligible unit, that means the income has to be determined on the basis of revenue generated by the eligible unit and expenses incurred in the specific eligible unit and no other outside cost to be included unless there is direct nexus to it. In the given case, the assessee has already submitted stand alone revised profit and loss account to demonstrate that the eligible unit has already absorbed all the relevant expenses like manufacturing, marketing and relevant finance cost. The AO tries to allocate the general corporate expenses which has no direct nexus to the operation of the eligible units. Therefore, we direct the Assessing Officer delete the allocation of corporate office expenses and depreciation. Accordingly, the ground raised by the assessee is allowed.

28. With regard to Ground No. 3, brief facts of the issue are, the Assessing Officer during the assessment proceedings re-worked the

finance cost allocation by observing that the issue of allocation of finance and interest cost has been elaborately discussed in the block assessment order of the assessee. The finance charges allocated to the Goa unit is only in respect of interest paid on the term loan and the bank cheques specifically raised for the Goa unit. The assessee has submitted the monthly cash flow statement of the Goa unit. Assessing Officer observed from the statement that the unit had working capital deficit for the months of October, November and December, 1997. Subsequently, it has generated cash surplus, considering the above, Assessing Officer observed that Goa unit generated sufficient surplus which has enough for its working capital requirement is not factually correct. The working capital needs of the unit was met out of the borrowings of the company. This expense towards finance costs has not been debited to the profit and loss account of the Goa unit for arriving at its profit for the purpose of 80IA deduction. Accordingly, he re-worked the working capital deficit observed in October, November, and December, 1997 and allocated @18% of the cost to the unit to the extent of ₹.12.89 lacs. The same was reduced from the deduction claimed under section 80IA of the Act.

29. Aggrieved, assessee preferred appeal before the Ld. CIT(A). Ld.CIT(A) sustained the additions made by the Assessing Officer.

30. Aggrieved, assessee is in appeal before us, at the time of hearing, Ld.AR of the assessee brought to our notice Page No. 9 of the Paper Book and Page No. 17 of the Paper Book wherein the assessee has allocated finance cost relating to the respective units finance Cost of ₹.87.86 lacs to the KKD unit and ₹.32.08 lacs for Goa unit respectively. He submitted that the relevant interest cost is already allocated with respective units. He brought to our notice Page No. 7 of the assessment order and he objected to the findings of the Assessing Officer wherein he has taken working capital shortage only in the months of October, November and December 1997 and charged interest @18%. He submitted that the working capital is a running requirement and the method adopted by the Assessing Officer is not proper. Further, he brought to our notice Page No. 37 of the Paper Book which is the Balance Sheet of the company wherein assessee has sufficient funds at its disposal which is far more than the loan funds taken by the assessee i.e., shareholders funds of ₹.97.89 crores and loan funds of ₹.8.91 crores and the investments in fixed assets at ₹.60.52 crores. He submitted that therefore, the assessee has sufficient working capital at

its disposal and he prayed that the method adopted by the Assessing Officer is not proper and the disallowance made by the Assessing Officer on finance cost be deleted.

31. On the other hand, Ld. DR relied on the orders of the lower authorities.

32. Considered the rival submissions and material placed on record, we observe that, Assessing Officer observed that assessee has shortage of working capital in the month of October, November and December and charged interest @18% to allocate the finance cost towards the working capital requirement of the Goa unit and to that extent he made adjustment while giving deduction under section 80IA of the Act. After careful consideration, we observe that the Goa unit has shown working capital deficit in the above said months. However, Assessing Officer has not discussed the working surplus declared by the Goa unit between January 1998 to March 1998. The Assessing Officer cannot cherry pick the working capital requirements only to working capital deficit overlooking the surplus. In our considered view the method adopted by the Assessing Officer is not proper. He has to see the overall working capital requirement for the period and in case at the end of the period if

there is any deficit in working capital requirement he may proceed to disallow the same. He has to analyze the whole period under consideration. In the given case it is not so. He has only focused on deficit of working capital overlooking the surplus of working capital during the subsequent period. Therefore, we do not see any reason to follow the method adopted by the Assessing Officer. Accordingly, in our considered view the assessee also demonstrated that it has sufficient non-interest borrowing funds at its own disposal. Therefore, there is no necessity for the Assessing Officer to allocate working capital finance cost to the Goa unit. Accordingly, Ground No. 3 raised by the assessee is allowed.

33. Further, we observe that Assessee has raised following additional ground in its appeal: -

"Without prejudice to the contention of the appellant that the assessee is entitled to the depreciation on the shunt capacitor (the equipment) leased to RSEB, in the event it has held that the assessee is not entitled to depreciation on the equipment by reason of it being held that it is not the owner of the property or otherwise, then it ought to be held that the part of the lease rent of Rs. 64,46,400/- received during the year which represents recovery of the capital sum expended by the appellant ought not to be taxed "

34. Ld. Counsel for the assessee submitted that the above additional grounds of appeal are purely legal ground and do not require any fresh examination of facts. Therefore, Ld. Counsel for the assessee prayed it may be admitted.

35. Ld. DR objected for admission of the additional ground as it was never raised before lower authorities and therefore cannot be admitted.

36. Considered the rival submissions and material placed on record, we observe that as the said additional ground is legal ground, wherein, the facts are on record and facts do not require fresh investigation, following the decision of Hon'ble Supreme Court in the case of National Thermal Power Co., Limited v. CIT 229 ITR 383 (SC), we admit the said additional ground of appeal.

37. At the time of hearing, Ld. AR of the assessee brought to our notice that the identical issue has been considered by the Co-ordinate Bench of this Tribunal in assessee's own case for the A.Y. 1996-97 in ITA No. 1251/MUM/2003 dated 30.08.2007 and Coordinate Bench has adjudicated the issue and remitted the issue back to the file of the Assessing Officer. He brought to our notice Para No. 15 of the order

(copy of the order is placed on record). Ld.AR of the assessee prayed that the similar direction may be issued for the year under consideration.

38. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

39. Considered the rival submissions and material placed on record, we observe from the record that identical issue is decided by the Coordinate Bench in assessee's own case for the A.Y. 1996-97 in ITA No. 1251/MUM/2003 dated 30.08.2007 and remitted the issue back to the file of the Assessing Officer. While deciding the issue, the Coordinate Bench of the Tribunal held as under: - -

"15. Now, we deal with the alternative claim raised by the learned counsel. It is the contention of learned counsel of the assessee that if lease transaction is held to be in the nature of finance lease, then lease rental receipt of the assessee has to be bifurcated into interest component and principal component and only interest component should be added to the income of the assessee.

16. Learned DR of the revenue has raised an objection that this alternative claim of the assessee cannot be considered by the Tribunal and reliance was placed by him on the Judgement of Hon'ble Delhi High Court rendered in the case of CIT Vs. La Medica (supra). Learned Counsel of the assessee has relied upon the Judgement of Hon'ble Jurisdictional High Court rendered in the case of Ciba of India Ltd. (supra). He has also distinguished the facts in the present case with the facts in the case of La Medica (supra). We find that in the case of La Medica (supra), the issue involved was regarding claim that the purchases were made from Kalpana Enterprises, to whom payments were allegedly have been made and it was accepted by the Tribunal that supplies were not made by Kalpana Enterprises. After accepting this, the Tribunal proceeded to decide as to whether purchases were made from some other sources. In that case, the issue was regarding the claim of the assessee for purchase which was found bogus. In the

present case, the transaction is not found bogus; but it is held by the Tribunal in A.Y, 1995-96 that lease transaction is a finance lease. Once, it is accepted that it is a finance lease, consequently, directions has to be given by the Tribunal as per the Judgement of Hon'ble Jurisdictional High Court rendered in the case of Ciba of India Ltd. (supra). In the case of Ciba of India Ltd.(supra), it was held by Hon'ble Jurisdictional High Court that it is the duty of the Tribunal even without an alternative submission, to pass necessary consequential orders suo moto to give such further direction in the matter as the situation may warrant. In the present case, we have held that this lease transaction is a finance lease transaction; and hence the assessee is not entitled to depreciation. As a consequences of the same, it has to be held that the lease. rental receipt by the assessee has to be bifurcated into interest component and principal component. We, therefore, direct the Assessing Officer that while disallowing the claim of the assessee regarding depreciation; he should also examine and bifurcate the lease rental receipt of the assessee from this party into interest component and principal component and only interest component should be added to the income of the assessee instead of entire lease rental receipt. The Assessing Officer should pass necessary order as per law after providing adequate opportunity of being heard to the assessee."

40. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 1996-97, we allow the ground raised by the assessee. Accordingly, additional ground raised by the assessee is allowed for statistical purpose.

41. In the result, appeal filed by the assessee is allowed as indicated above.

Order pronounced in the open court on 01st April, 2024.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 01.04.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum