

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A': NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No.5426/Del /2012  
Assessment Year: 2008-09

ACIT, Circle-22,  
New Delhi

Vs. M/s Accurate Transformers Ltd.  
8, Local Shopping Centre, IInd & IIIrd Floor  
Vardhman Siddharth Plaza, Sarita Vihar,  
Delhi 110 092.

PAN : AACCA 7126 L

(Appellant)

(Respondent)

Date of Hearing : 25.08.2015  
Date of Pronouncement: 30.09.2015

Appellant by : Shri K.K. Jaiswal, DR

Respondent by: Shri Amit Goel, CA

**ORDER**

**PER CHANDRA MOHAN GARG, JUDICIAL MEMBER**

This appeal by the Revenue has been preferred against the order of the CIT(A)-III, dated 21.08.2012 in Appeal No. 457/2010-11 for AY 2008-09.

2. Ground Nos. 3 and 4 are general in nature, which need no adjudication. The remaining grounds of the Revenue read as under:

*“1. On the facts and in the circumstances of the case the CIT(A) erred in allowing the excess deduction u/s 80IC of Rs. 63,62,909/- which was reduced by the AO in the assessment order passed u/s 143(3) of the Act.*

*2. On the facts and in the circumstances of the case the CIT(A) erred in analysing the facts of the case that the assessee has claimed less expenses against 80IC units, thereby manipulating the accounts.”*

3. Briefly stated, the facts giving rise to this appeal are that the case was selected for compulsory scrutiny and notice u/s 143(2) was issued to the assessee on 12-05-2009 and served upon the assessee on 18.8.2009. Subsequently, a fresh notice u/s 143(2) and 142(1) alongwith detailed questionnaire was issued on 23.8.2010 and served upon the assessee through speed post. In response to this notice, the assessee's representative attended the assessment proceedings. The AO noticed that the assessee company has claimed deduction u/s 80IC of the Act to the tune of Rs.5,60,23,955/- and the said deduction has been claimed with respect to two units i.e. at Haridwar and Dehradun. The AO also noted that separate profit and loss A/c and balance sheet

in respect of these two units have been furnished. The AO, while comparing the P&L A/c of these two units with the consolidated P&L A/c of the assessee company noted that certain expenditure under the head “personal expenditure and administrative expenditure” have been allowed to the 80IC units and on 80IC units disproportionately. The AO further observed that the assessee company has allocated maximum expenditure to the non 80IC units to get the maximum deduction of the 80IC in the other 80IC units. The assessee was asked to explain as why the disproportionate allocation should not be reallocated and by reallocation of such expenditure the amount so arrived at should not be disallowed. After perusing the reply filed by the assessee, the AO held that the assessee has claimed travelling expenses, legal and professional expenses, tender fee, commission, audit fee and director’s remuneration disproportionately without any basis and the same was to be allocated and claimed in proportionate to the sales allocated to the eligible 80IC units and non 80IC units, made the impugned disallowance and reduced the deduction claimed by the assessee u/s 80IC of the Act.

4. Aggrieved by the above assessment order, the assessee preferred appeal before the ld. CIT(A) which was allowed by passing the impugned order and the AO was directed to delete the entire impugned addition. Now the aggrieved revenue is before this Tribunal in this second appeal with the grounds as reproduced hereinabove.

5. We have heard the arguments of both the sides and have carefully perused the relevant material on record. The ld. D.R supporting the action of the AO submitted that in the consolidated profit and loss A/c of all the units, the assessee company had claimed expenses on account of director's remuneration, tender fee expenses and commission and there was no reason or basis for the said allocation. The ld. D.R further submitted that the assessee also claimed travelling expenses, legal and professional charges and audit fee expenses, hire from non 80IC units with the intention to reduce tax liability of non 80IC units, therefore, the AO was quite justified in making disallowance in this regard and claim of the assessee u/s 80IC of the Act was rightly reduced. The ld. D.R further submitted that the ld. CIT(A) granted relief to the assessee without any basis and justified reasons. Therefore, the impugned order may be set aside by restoring that of the AO.

6. Replying to the above, the ld. A.R reiterated his submissions made before the lower authorities dated 17.8.2012 and submitted that the action of the AO as erroneous, arbitrary and was based on surmises and conjectures as the AO has failed to appreciate as to how the travelling expenses can be in proportionate of sales. The ld. A.R further pointed out that in the various units travelling expenses of non 80IC units were higher than the units had undertaken more travelling relating to those non 80IC units. The ld. A.R further pointed out that the directors travelling was in relation to non 80IC units and were, therefore, rightly booked in those non 80IC units. The ld. A.R strenuously contended that the legal and professional charges cannot have any connection with the sales so as to allocate expenses in the ratio of sales turnover. The ld. A.R vehemently contended that the tender fee was booked in the non 80IC units from which tender bidding was made and commission was made on sales made by non 80IC units and therefore, such commission expenses were booked in non 80IC units. The ld. A.R also explained that the audit fees of Rs. 65, 211/- being small expenses was booked at head office because the audit was conducted at head office and director's remuneration was allocated to 80IC units based on time devoted to 80IC units.

7. The ld. A.R vehemently contended that the assessee company is maintaining separate books of accounts for 80IC units and non 80IC units which were examined and audited by the auditors and correctness of the claim of deduction u/s 80IC of the Act has been duly certified and verified by the auditors. The ld. A.R further submitted that separate detailed statement of accounts of 80IC units and non 80IC units have been furnished before the head office and the AO has not pointed out any discrepancy therein. The ld. A.R further drew our attention towards the submissions of the assessee before the first appellate authority dated 17.8.2012 and submitted that the details of all the expenses were also furnished before the AO and there is no dispute by the AO in this regard and the expenses have been booked in the respective units on actual basis viz the expenditure have been booked in units to which they pertain and hence the action of the AO in allocating expenses in ratio of sales is totally arbitrary, unjustified and patently wrong. The ld. A.R lastly contended that the AO has not pointed out any instances of any expenditure of 80IC units booked in any non 80IC units and, vice versa. Therefore, the view taken by the AO is not sustainable and in accordance with law. The ld. A.R also contended that the AO was wrong in holding that the expenses should be in some proportion of sales in various units.

8. Supporting the conclusion of the ld. CIT(A), the ld. A.R placed his reliance on the ratio of the decision of the ITAT Mumbai in the case of DCIT Vs. Reliance Infrastructure [2011] 9 ITR [Trib] 84 and submitted that the AO was not justified in allocating head office expenses on the basis of turnover instead of method of allocation of expenses as adopted by the assessee. The ld. A.R also took us through the findings of the first appellate authority at para 4.2 at page 6 of the impugned order and submitted that the assessee has submitted separate audited balance-sheet and profit and loss account of 80IC units alongwith audited report and the auditors have certified the correctness of books of account and the claim of deduction u/s 80IC of the Act, therefore, the action of the AO reducing the claim of deduction on notional basis taking proportion of sales cannot be held as justified and the same was rightly demolished by the ld. CIT(A).

9. In rejoinder, the ld. D.R submitted that the allocation of the legal and professional fees, audited fees and director's remuneration cannot be held as justified without any basis as these expenses have been claimed in the consolidated profit and loss account. However, the ld. D.R fairly and candidly acknowledged that the assessee has allocated the director's remuneration of Rs. 7,28,770/-, legal and

professional charges of Rs. 2,95,035/- and auditor's fees of Rs. 65,211/- to the eligible 80IC units.

10. On careful consideration of the rival submissions of both the sides, at the very outset, we note that the AO has disputed travelling expenses, legal and professional expenses, tender fees, commission, audit fees, director's remuneration by hold that that these expenses should have been allocated in the ratio of sales effected by eligible 80IC units and non eligible 80IC units. On this proportion, the AO further observed that some part of these expenses are to the eligible 80IC units but this allocation is not proportionate and in ratio of sales allocable to eligible 80IC and non 80IC units. The AO proceeded to make additions in this regard by taking sales ratio of eligible 80IC and non eligible 80IC units. When we consider the ratio of the order of the ITAT Mumbai Bench in the case of Reliance Infrastructure [supra], then we note that the co-ordinate bench of the Tribunal has held that "allocation of head office expenses for the purpose of computation of deduction made proportionate to the turnover of the respect units".

11. Adverting to the facts and circumstances of the present case in hand, we note that the assessee reiterated the submissions vide order dated 17.8.2012 before the ld. CIT(A) which are reproduced at para 4.1 of the ld. CIT(A)'s order.

12. We further note that the ld. CIT(A) granted relief to the assessee with the his findings and observations which are given at para 4.2 of his order. In view of the above, when we analyse and evaluate the assessment order, we find that the AO in para 5 of the assessment order has noted that separate profit and loss account and balance sheet in respect of two units i.e, one at Haridwar and the other at Dehradun had been furnished. Perhaps the doubt was raised in the mind of the AO while comparing the profit and loss account of these two units with the consolidated profit and loss account of the assessee company wherein he noted that certain expenses have been allowed to the 80IC units and non 80IC units disproportionately. At the same time, we observe that the AO has not raised any doubt about the correctness, completeness and finalized results of the assessee company emerging from the audited reports. The AO has ignored this vital fact that the assessee company is maintaining separate books of account for 80IC and non 80IC units, which have been examined,

verified and audited by the auditors and the auditors duly certified claim of deduction u/s 80IC of the Act of the assessee company. We cannot ignore this fact that the assessee submitted separate audited statement of account of 80IC units and non 80IC units before the AO and discrepancy or deficiency was pointed out by the AO in them. The AO could not raise any defect to this fact that the expenses have been booked in respective units on actual basis and the same have been booked in the profit and loss account of the respective units to which they pertain. In view of the above noted facts and circumstances, we decline to approve the action of the AO in allocating expenses in ratio of sales because when the AO himself has noted that separate profit and loss account, balance sheet for 80IC and non 80IC units have been furnished alongwith all details then the impugned disallowance cannot be held as sustainable which is also unjustified and arbitrary and incorrect.

13. On the basis of the aforesaid discussion, we are in agreement with the conclusion of the Id. CIT(A) that the expenses like travelling, legal and professional fees, tender fees, commission etc are in the nature of direct expenses which can be linked to the sales of respective units. At the cost of repetition, we may point out that

while the assessee is maintaining separate books of account supported by bills and vouchers and all relevant details which were audited by the competent auditors and the claim of the assessee u/s 80IC of the Act was also verified and certified, then while the AO has not pointed out any defect in the financial statement and separately maintained books of accounts of the assessee and the AO has not raised any doubt in regard to the correctness, completeness of the financial statement and results of the assessee, then the notional disallowance made by the AO by taking proportionate sales of eligible 80IC and non 80IC units cannot be held as sustainable and in accordance with law. Under the above-noted factum and circumstances, the action of the AO in reducing the claim of deduction u/s 80IC of the Act cannot be held as correct and justifiable and thus we are inclined to hold that the Id. CIT(A) was rightly in directing the AO to delete the impugned addition. We are unable to see any ambiguity or perversity or any other valid reason to interfere with the order of the first appellate authority and we uphold the same on this issue. Accordingly, Ground Nos. 1 and 2 of the Revenue being devoid of merits are being dismissed.

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

**The decision is pronounced in the open court on 30.09.2015.**

Sd/-

**(L.P. SAHU)  
ACCOUNTANT MEMBER**

Sd/-

**(C.M. GARG)  
JUDICIAL MEMBER**

Dated: 30<sup>th</sup> September, 2015

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi