

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM**

I.T.A. No.5/Mum/2015
(Assessment Year: 2010-11)

Dilip Ghisalal Shah 46-A, 3 rd Floor, Room No 10 Abdul Rehman Street Mumbai- 400003	Vs.	Addl CIT 13(1) Now 17(1) Aaykar Bhavan, R. No. 419B. M.K. Rd. Mumbai- 400020
PAN/GIR No. : AAEPS5231M		
(Appellant)	..	(Respondent)

Assessee by:	Shri. D.B. Sanghvi
Department by:	Shri. B.S. Bist

Date of Hearing: 08.08.2016
Date of Pronouncement: 19.08.2016

ORDER

PER N.K.PRADHAN, AM:

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner(A) – 24, Mumbai and arises out of the assessment completed under section 143(3) of the Income Tax 1961, (hereinafter 'the Act').

2. The only ground raised by the assessee in this appeal is that the learned CIT(A) has erred in partly confirming the allocation of interest and expenses of the yarn division to interest pertaining to power project division of Rs. 4,00,000/- out of Rs. 7,00,000/- estimated and allocated by the Assessing Officer(AO).

3. The AO found that only direct expenses were claimed in respect of the power project division and all administrative and establishment expenses are claimed in the yarn business. Also the assessee had taken term loan from Bank of Baroda (BOB) to finance the investment in the wind

mill unit. He noticed that since the repayment amount is more than the revenue generated from the wind mill unit, for repayment of loan, the funds of the yarn unit were used. In the yarn unit, the assessee had taken loans for which interest expenses were being claimed in that unit. As per the AO, the interest expenses are being claimed in yarn units only thereby reducing the profit of yarn units and increasing the profit of wind mill unit, thereby making more profit eligible for deduction under section 80I of the Act. Also he found that other common expenses like audit fees and other administrative expenses should also have been allocated to the wind mill unit. However, the assessee has not done so. In view of the above, the AO estimated the expenses pertaining to wind mill unit but accounted in yarn unit at Rs. 7,00,000/-.

4. The learned CIT(A) agreed with the AO that the part of the common expenses and part of the interest expenses which were debited to the yarn division were relatable to the power division and the same should have been debited to it and profits lowered to that extent of the power division. However, taking into account the facts of the case, he reduced the allocation of such expenses at Rs. 4,00,000/- instead of Rs. 7,00,000/- estimated by the AO.

5. The learned Counsel for the assessee argued on this point at length. He referred to the Proprietors Capital Account of both the yarn division and the wind mill division. Also he relied upon the Trading and Profit & Loss A/c of the assessee for the year ended 31/03/2010. It was stated that the assessee maintains separate set of books of account of the yarn division and wind mill division. It also prepared separate P&L A/c for the yarn division and wind mill division. All expenses pertaining to yarn division and wind mill division were debited to respective P&L A/c. Further, to arrive at correct profit of yarn division as well as wind mill division, the assessee has debited Rs. 44,897/- to the P&L A/c of wind mill division and credited same amount to the P&L A/c of yarn division. Said amount of Rs. 44,897/-

has been determined by charging interest @12% per annum on the debit balance (if any) of the capital account of the assessee in wind mill division. Thus it was stated that the learned CIT(A) erred in partly confirming the allocation of interest and expenses of the yarn division to interest pertaining to power division a sum of Rs. 4,00,000/- out of Rs. 7,00,000/- estimated and allocated by the AO.

6. The learned DR submitted that the funds being common to both units with no segregation in this regard, the interest expenses should have been accounted in the wind mill unit also. It was stated that the borrowed funds were also utilized in financing the needs of the wind mill unit. It was argued that the assessee is financing the fund requirements of the wind mill unit vide repayment of loans from the funds of yarn unit.

7. We have considered the rival submissions and perused the relevant records. We find that the assessee has maintained separate set of books of account for the yarn division and wind mill division. It has prepared separate P&L A/c for both the divisions. It has allocated interest payment of Rs. 44,897/- from yarn division to the wind mill division. It has repaid term loan installments of wind mill division out of capital account of the assessee in yarn division. It has charged interest to the wind mill division from the day there was debit balance in the capital account of yarn division. Interest has been calculated day wise @ 12% per annum. We also find that the assessee had submitted before the AO a copy of the tax audit report and report in Form 10CCB. Section 44 AB was inserted from the assessment year 1985-86 and was primarily intended to ensure credibility of accounts maintained by an assessee. Audit Report submitted in Form 10CCB is intended to ensure credibility of claim of deduction u/s 80-IA of the Act. As the AO has not found any specific faultline in the audited accounts of the assessee, the adhoc disallowance of Rs. 4,00,000/- upheld by the learned CIT(A) is hereby deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19/08/2016.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K.PRADHAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/08/2016

AG(On Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai