

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 217/JP/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Deputy Commissioner of Income Tax, Circle-2, Jaipur.	बनाम Vs.	M/s Mahindras World City (Jaipur) Ltd., 411, 4 <sup>th</sup> Floor Neelkanth Tower, Bhawani Singh Road, C-Scheme, Jaipur.
PAN No.: AAECM 4950 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)  
निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani (CA)

सुनवाई की तारीख / Date of Hearing : 25/04/2017  
उदघोषणा की तारीख / Date of Pronouncement : 27/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is the appeal filed by the revenue emanates from the order of the Id. CIT(A)-I, Jaipur dated 08/12/2015 for the A.Y. 2011-12, wherein the revenue has taken only one effective ground of appeal, which is as under:

- "1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in not sustaining the re-computation of books profit made by the A.O. after bifurcating the interest expenses and other expenses between SEZ and DTA units."

2. The only issue involved in this appeal is against not sustaining the re-computation of book profit made by the Assessing Officer after bifurcating the interest expenses and other expenses between Special Economic Zone (SEZ) and Domestic Tariff Area (DTA) units. The brief facts of the case are that the return of income was filed on 30/09/2011 declaring loss of Rs. 5,01,30,620/-. The assessee is engaged in development, operating and maintaining SEZ and the assessee is entitled for deduction U/s 80IAB of the Income Tax Act, 1961 (in short the Act), but for the year under consideration, the assessee has not chosen its first year of deduction. The assessee has declared income for the year under consideration out of lease rent premium, interest income as part of its business income. The assessee has shown working of MAT computation as under:-

Profit as per part II & III of schedule VI	12685795
Less:	
Profit from SEZ	15408230
	-2722435

The assessee has claimed net profit of Rs. 1,26,85,795/- in the P&L account as per the Companies Act. While computing the book profit for MAT purposes, the assessee has debited profit from SEZ at Rs. 1,54,08,230/- from the net profit of Rs. 1,26,85,795/-. Thus the assessee has calculated loss. The Assessing Officer noticed that the assessee has

not proportionately bifurcated the expenses on the basis of turnover and after making various calculations regarding bifurcation of the various expenses, the Assessing Officer has finally calculated book profit at Rs. 1,26,85,795/-.

3. The Id. CIT(A) has deleted the addition by holding as under:-

*“3.1.2 (i) The facts of the case are that the appellant company Mahindra World City (Jaipur) Ltd. (herein after referred to as “MWCJL” or “Company”) is a joint venture between Rajasthan Government (through RIICO) and Mahindra Group (through Mahindra Life Space Developers Ltd.) in the ratio of 26:74 whereby MWCJL is a project company incorporated to develop Special Economic Zone (“SEZ”) and Domestic Tariff Area (“DTA”) in Jaipur City in an area of 2636 acres of land. The appellant company filed its return of income for the year under consideration declaring loss of Rs. 5,01,30,620/-. The Book Profit for the purpose of calculation of MAT was also worked out to be NIL by the appellant company in its return of income (“ROI”). It is engaged in the development of multiproduct SEZ with dedicated zones for IT / ITeS, Engineering and Related Industries, Handicrafts, Apparel, Gems and Jewellery, Warehousing and Logistics (collectively referred to as “SEZ”). Areas earmarked for SEZ are further bifurcated into Horizontal and Vertical Areas. In Vertical areas (also referred to as “Evolve”), assessee company develops buildings and derives rental income by letting it out on rent. Whereas in Horizontal Areas, the assessee company develops land and gives it on long term lease. It is also engaged in developed of a Domestic Tariff Area (DTA) for various Industries.*

(ii) *The assessment was completed under section 143(3) vide order dated 26.03.2014. It is noted from the assessment order that the AO observed that the appellant has shown Book Profit for MAT purposes as under:*

<i>Profit as per part II and III of Schedule VI</i>	<i>Rs. 1,26,85,795/-</i>
<i>Less: Profit from SEZ</i>	<i>Rs. 1,54,08,230/-</i>
	<i>Rs. (-) 27,22,435/-</i>

(iii) *It was observed by the AO that the appellate has bifurcated various expenses into the head of SEZ and DTA. Those which are incurred for developing SEZ unit were grouped under the head SEZ and those related to DTA unit were grouped under the head DTA. Various expenditures like cost of land and developmenf, interest and depreciation was bifurcated into SEZ and DTA on basis of separate accounts maintained by the appellate which clearly demarcated which expenditure is incurred for SEZ unit and which is incurred for DTA unit. The remaining common day to day expenses were grouped into the head 'other expenses' and bifurcated into DTA and SEZ expenses. These 'other expenses' include conveyance, telephone, audit fees, electricity, advertisement expenses etc.*

(iv) *The AO, not satisfied with the explanation submitted by the appellant, recomputed the profits derived by the appellant company from its SEZ Operations by bifurcating the total Interest and Other expenses, for SEZ and DTA Operations, on the basis of turnover by observing as under:*

- \* It is impossible to precisely distinguish whether expenditure was incurred for SEZ or DTA Unit.*
- \* Many expenses for eg. Auditor's Fee, telephone expenses are intermingled and it is difficult to distinguish how much was incurred for SEZ Unit and DTA Unit.*

- \* It appears quite impractical that assessee has incurred interest expenditure to the turn of Rs. 17,45,35,313/- for DTA unit just earning revenue of 63,60,339. But in SEZ Unit it has incurred only Rs. 13,22,84,826/- to earn revenue of as high as Rs. 41,99,74,895/-. The only plea taken by the appellant is that it has separately demarcated its expense. But it appears more of an afterthought to cleverly shift all the expenses to DTA unit so that DTA's profit is reduced and SEZ profit is increased, thereby evading tax.*
  - \* The only logical basis for dividing the expenses is on the ration of its turnover. This is the only scientific basis on which assessee could have divided his expenses while making MAT computation.*
- (v) *In view of the above, the AO worked out loss from SEZ at Rs. 18,16,35,777/- instead of profit of Rs. 1,54,08,230/- as declared by the appellant company and thus, while computing the MAT, the AO taken the book profit at 1,26,85,795/- against NIL shown by the appellant company.*
- (vi) *During appellate proceedings, it was admitted by the appellant company that separate set of books for SEZ and DTA were not maintained by it and it was its contention that the books of accounts were maintained in a manner that the revenue earned, expenditure incurred, additions/deletions made to the work in progress could be precisely determined separately for DTA and SEZ at any point of time by it as from 1-Apr-2009 onwards, it maintained its books of accounts in SAP Software and for bifurcation of expenses into those incurred for SEZ and DTA, it developed various cost centers which were assigned different codes in SAP. All the expenses, including payroll cost, are tagged to these cost centers at the time of their booking. Once the expenses are bifurcated into cost centers, they are further*

*bifurcated into expenditure of revenue nature and those to be added to the work in progress. Further, the expenses of revenue nature are finally bifurcated into DTA and SEZ on the basis of turnover. The interest cost is bifurcated on the basis of area developed under DTA and SEZ. Hence the accounting system leads to preparation of true and fair financial statements not only of their company as a whole but also in respect of each division and further within each division on the area under work in progress/ capital work in progress vis a vis the area already developed and converted into stock in trade / fixed assets.*

*(vii) Regarding interest expenses, it was submitted by the appellant that:*

- \* it has taken two types of loans, .e. loans specifically taken for developing area under 'Evolve' categorized as 'Evolve loan' and loans taken for development of both SEZ and DTA ore categorized as 'Infro loons'.*
- \* The Interest and Finance Expenses token specifically for Evolve are bifurcated into revenue and additions to Capitol Work in Progress on the basis of the area developed and under development.*
- \* Interest expenses incurred on the loan utilized for the development of both DTA and SEZ ore bifurcated into revenue nature and additions to work in progress on the basis of area developed and area under development on a monthly basis. Further the revenue expenses are further bifurcated into that pertaining to DTA and SEZ on the basis of Area Occupied.*
- \* Balance interest expenses incurred by the assessee company added to the Capital Work In Progress:-*
- \* Interest expenses added to Work In Progress have been bifurcated into SEZ and DTA based on the month wise area under development/ Details are as under:-*
- \* Thus "Interest and Finance Charges"<sup>1</sup> were added to the total expenditure in the profit and loss account of the*

*assessee company for the relevant assessment year. However, major part of the expenses were subsequently added to the capital work in progress/work in progress.*

- (viii) I have duly considered the submissions of the appellant company, assessment order and material placed on record and find merit in its submissions. During appellate proceedings, the appellate has submitted in detail how it has bifurcated expenditure between DTA and SEZ operations and further, the bifurcation of revenue expenditure into DTA and SEZ units. The AO has worked out loss of SEZ at Rs. 18,16,35,777/- against profit of Rs. 1,54,08,230/- shown by the appellant company. The AO has not disturbed the book profit of the appellant company as a whole shown at Rs. 1,26,85,795/- which means that profit in DTA unit was to the tune of Rs. 19,43,21,572/- which is absurd. It is noted that according to the calculation of AO, the appellant company earned a profit of Rs. 126.85 Lac from its DTA operations on revenue of Rs. 63.60 Lac, which is again absurd.*
- (ix) It is also noted that out of total interest and finance expenses of Rs. 30.68 Crore as debited in the Profit and Loss account, only Rs. 10.18 Crore were actually charged to P & L account and the balance amount of Rs. 19.50 Crore taken to WIP/CWIP and this aspect has totally been ignored by the AO while determining profit from SEZ and DTA operations.*
- (x) It is noted that the AO ignored the fact that the appellant company has consistently followed a systematic method for bifurcating the expenses into DTA and SEZ. For the purpose of bifurcating expenses of revenue nature, into expenses for*

*SEZ and DTA, appellant company has actually taken revenue from SEZ and DTA as the base.*

- (xi) The AO ignored the fact that although the appellant company incurred interest expenditure to the tune of Rs. 1745.35 Lacs in DTA, but out of this sum only Rs. 60.25 Lacs (3% of Rs. 1745.35 Lacs) was charged to the P&L account. Further since 66% of the land area (1744 acres out of 2636 Acres) has been earmarked for DTA out of which 96% (1677 Acres out of 1744 Acres) was under development during the relevant assessment year, higher amount of interest expenses pertained to DTA.*
- (xii) In view of the totality of facts and circumstances of the case "and especially looking to the fact that the appellant company is maintaining its books of accounts in SAP software consistently and the various expenses are allocated to various cost centers on a predetermined and scientific basis and the revenue component of the interest expenses were allocated on turnover basis, it is held that the AO was not justified in allocating the total interest and other expenses on the basis of turnover as these leads to absurd results which cannot be allowed. Therefore, it is held that the AO was not justified in apportioning interest/finance charges and other expenses between SEZ and DTA units of the appellant company on the basis of turnover only. Therefore, the book profit determined by the AO for the purpose of MAT cannot be sustained."*

4. Now the revenue is in appeal before us. The Id. CIT DR has vehemently supported the order of the Assessing Officer. On the

contrary, the Id AR of the assessee has reiterated the arguments as made before the Id. CIT(A) and vehemently supported the order of the Id. CIT(A).

5. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. The assessee has admitted during the appellate proceedings that no separate books of account for SEZ and DTA were maintained. However, it was claimed that the books of account are so maintained that revenue earned the expenditure incurred, the additions/deletions made to the work in progress could be precisely determined separately in DTA and SEZ at any point of time w.e.f. 01/4/2009. It was also claimed that the accounts were maintained in SAP software and for bifurcation of expenses between the SEZ and DTA, various cost centers which has been assigned different codes in SAP are maintained and it was claimed that once the expenditure has been bifurcated in the cost centers then they are further bifurcated into the revenue or capital. The revenue expenses further bifurcated between the DTA and SEZ on the basis of turnover. This claim of the assessee itself appears to be contradictory as once it has been claimed that various cost centers assigned different codes bifurcate the expenses between the SEZ

and DTA and then the expenses are further bifurcated into revenue and capital and then further again revenue expenses were finally bifurcated into DTA and SEZ on the turnover basis. Further with regard to the interest cost it is claimed that it is based on the area developed under DTA and SEZ. In our considered view, although the assessee has claimed that he is maintaining books of account and SAP software and various expenses are allocated by the various cost centers on a predetermined and scientific basis and revenue component of the interest expenses were allocation on turnover basis, appears to be misleading. The assessee has got various types of loans and the loans are utilized for the development of SEZ and DAT. Since the area is demarcated and the loan expenditure incurred on these areas can be identified without any difficulty. Further the income of the one area qualified for deductions while the income of other area is taxable. Therefore, the obligation is on the assessee to identify the borrowed amount spent on the development of SEZ and DTA separately. Simply making a claim that the assessee is having maintained account in SAP software in scientific manner shall not establish the correctness of the allocation of the expenses between the two SEZ and DTA, therefore, in the interest of justice and equity, we find it appropriate to remand the issue to the file of the Assessing Officer to be decided de novo. The assessee is directed to produce all the relevant

documents/information with regard to the various expenses incurred in the development in SEZ and DTA units.

6. In the result, the appeal of the revenue is allowed for statistical purposes only.

Order pronounced in the open court on 27/04/2017.

Sd/-  
(कुल भारत)  
(Kul Bharat)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 27<sup>th</sup> April, 2017

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The DCIT, Circle-2, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Mahindras World City (Jaipur) Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 217/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar