

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and
Shri K. Narasimha Chary, Judicial Member**

**I.T.A. No. 2094 /KOL/ 2013
Assessment Year: 2004-2005**

M/s. Deepak Spinners Limited,.....Appellant
16, Hare Street,
Kolkata-700 001
[PAN: AABCD 0387 R]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-11, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

Appearances by:

Shri S. Jhajharia, A.R., for the assessee

Shri Sallong Yaden, Addl. CIT, D.R., for the Department

Date of concluding the hearing : September 20, 2016

Date of pronouncing the order : October 04, 2016

O R D E R

Per Shri P.M. Jagtap, A.M.:

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 14.03.2013 and the grounds raised therein by the assessee read as under:-

- 1. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in confirming the disallowance of sales promotion expense of Rs.3,61,000/- made in assessment (out of total sum of Rs. 21,80,553/- claimed and debited in P&L a/c) purely on estimate and merely on assumption and presumption without basis and without properly considering and appreciating the facts that the a/cs regularly maintained were fully audited and expenses were incurred wholly and exclusively for the purpose of business and the expenses incurred were neither personal nor capital in nature nor any gift made to anybody.*

The actions of the A.O & Ld. CIT(A) were wholly unreasonable, uncalled for and bad in law.

2. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in confirming the disallowance of freight & handling charge expense of Rs. 10,00,000/- made in assessment (out of total sum of Rs. 5,29,21,590/- claimed and debited in P&L a/c.) purely on estimate and merely on assumption and presumption without basis and without properly considering and appreciating the facts that the a/cs. regularly maintained were fully audited and the expenses were incurred wholly and exclusively for the purpose of business and the expenses incurred were neither personal nor capital in nature.

The actions of the A.O & Ld. CIT(A) were wholly unreasonable, uncalled for and bad in law.

3. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in confirming the disallowance of general / misc. expense of Rs.2,00,000/- made in assessment (out of total sum of Rs.83,77,451/- claimed and debited in P&L a/c) purely on estimate and merely on assumption and presumption without basis and without properly considering and appreciating the facts that the a/cs regularly maintained were fully audited and the expenses were incurred wholly and exclusively for the purpose of business and the expenses incurred were neither personal nor capital in nature.

The actions of the A.O & Ld. CIT(A) were wholly unreasonable, uncalled for and bad in law.

4. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in confirming the ad hoc, arbitrary and estimated disallowance of the aforesaid expenses under three heads, aggregated to Rs.15,61,000/- (Rs.3,61,000/- + Rs.10,00,000/- + Rs.2,00,000/-), without specifying or pointing out even a single item of expense under any of those three heads as disallowable and furthermore without even prior rejection of the audited accounts u/s 145 of the Act and also without considering the fact that no such disallowance was made in assessment u/s 143(3) for the A.Y 2003-04 passed by the same A.O on the same date.

The actions of the A.O & Ld. CIT(A) were wholly unreasonable, uncalled for and bad in law.

5. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in issuing a simple direction to the A.O to verify the claim of the deductions

u/s 801A and u/s 801B of the Act and allow them as per law / provisions of I. Tax instead of issuing a specific direction to the A.O to allow (over and above the deductions u/s 801A & 801B already allowed in the assessment as per the appellant's claim in the return) further deductions u/s 801A and u/s 801B in respect of the two Industrial Undertaking Units admissible to the appellant because of enhancement of the profit /income of those two units by way of disallowance of the aforesaid expenses of Rs.15,61,000/- made in assessment.

The action of the Ld. CIT(A) in issuing a wrong direction was wholly unreasonable, uncalled for and bad in law.

6. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in issuing a simple direction to the A.O to re-calculate the total income u/s 115JB as per the provisions of the I. Tax Act instead of straightway allowing the admissible deductions of (i) the deferred tax of Rs. 1,65,52,699/- explained with supporting various judicial decisions and (ii) the export profit of Rs.94,17,305/- u/s 80HHC of the Act for the purpose of computing the Book Profit u/s 115JB, when deduction u/s 80HHC has been separately allowed by him as an admissible deduction while computing the total income under the normal provisions of the Act in Ground No. 2 of the grounds of appeal for both the A.Ys 2003-04 & 2004-05.

The action of the Ld. CIT(A) in referring the matter to the A.O was wholly unreasonable, uncalled for and bad in law.

7. For that your petitioner craves the right to put additional grounds and / or to alter / amend /modify the present grounds before or at the time of hearing.

2. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards the issue involved in Ground no. 1 relating to the disallowance of Rs.3,61,000/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) out of sales promotion expenses, the relevant facts are that the assessee is a Company, which is engaged in the business of manufacturing of synthetic blended yarn, etc. The return of income for the year under consideration was filed by it on 28.10.2004 declaring total income of Rs.65,23,380/-. In the profit and loss account filed along with the said return of income, a sum of Rs.21,80,553/- was debited by the assessee on account of sales promotion expenses. During the course of assessment proceedings, the

claim of the assessee for sales promotion expenses was examined by the Assessing Officer and on such examination, he found that the expenditure of Rs.3,61,000/- incurred by the assessee on offering gifts to the Company's guests had no relation with the business of the assessee. He, therefore, disallowed the claim of the assessee for sales promotion expenses to the extent of Rs.3,61,000/-. On appeal, the Id. CIT(Appeals) confirmed the said disallowance made by the Assessing Officer as the assessee could not produce any evidence to show any nexus between the gifts claimed to be given to its customers and its business of production of synthetic yarn. At the time of hearing before us, the Id. counsel for the assessee has submitted that the relevant gifts were given by the assessee to its customers and this position was not disputed even by the Assessing Officer. On a query raised by the Bench in this regard, he has submitted that the list of customers to whom the gifts had been given was maintained by the assessee. It is, however, observed that there is no reference to any such list either in the A.O.'s order or Id. CIT(A)'s order. There is also nothing brought on record to show that such list was filed by the assessee either before the Assessing Officer or before the Id. CIT(Appeals). The Id. counsel for the assessee has also not been able to explain as to whether such gifts have been given by the assessee in the earlier years as well as in the subsequent year in order to show that there is a custom followed by the assessee to give such gifts to the visitors of the factory regularly. Keeping in view all these facts of the case, we find that the assessee has failed to establish that the expenses in question incurred on distribution of gifts are incurred wholly and exclusively for the purpose of its business and this being so, we find no infirmity in the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on this issue. The same is, therefore, upheld dismissing ground no. 1 of the assessee's appeal.

3. As regards the issues involved in Grounds No. 2 & 3 relating to the disallowance of Rs.10,00,000/- and Rs.2,00,000/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) out of freight and other

handling expenses and general/miscellaneous expenses, it is observed that both these disallowances were made by the Assessing Officer and confirmed by the Id. CIT(Appeals) for want of complete details. A perusal of their respective orders, however, shows that it is not specifically pointed out therein as to what details in this regard were called for by them which the assessee failed to furnish. In this regard, the Id. counsel for the assessee has furnished the details of entire expenses claimed under the relevant two heads and has urged that the issues may be restored to the file of the Assessing Officer for giving an opportunity to the assessee to support and substantiate its claim for the said expenses as no such opportunity was specifically afforded to the assessee either by the Assessing Officer or by the Id. CIT(Appeals). We find merit in this contention of the Id. counsel for the assessee and since the Id. D.R. has also not raised any objection in this regard, we restore both the issues relating to the disallowance made out of freight and other handling expenses and miscellaneous expenses to the file of the Assessing Officer for deciding the same afresh after giving a proper and sufficient opportunity to the assessee to support and substantiate its claim for the said expenses. Grounds No. 2 & 3 are accordingly treated as allowed for statistical purposes.

4. The issue raised in Ground No. 4 by the assessee is nothing but repetition of the issues raised in Grounds No. 2 & 3. The same, therefore, does not call for any specific adjudication, as agreed even by the Id. counsel for the assessee.

5. The issue raised in Ground No. 5 relating to the assessee's claim for deduction under section 80-IA and 80-IB in respect of profits of the eligible Undertakings as enhanced by addition, if any, finally sustained on account of disallowance of expenses is consequential in nature and the Assessing Officer accordingly is directed to allow consequential relief to the assessee on this issue. Ground No. 5 is accordingly treated as allowed.

6. Ground No. 6 raised by the assessee in its appeal is not pressed by the ld. counsel for the assessee at the time of hearing before us. The same is accordingly dismissed as not pressed.

7. In the result, the appeal filed by the assessee is allowed in part for statistical purposes.

Order pronounced in the open Court on October 04, 2016.

**Sd/-
(K. Narasimha Chary)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 4th day of October, 2016

- Copies to :
- (1) **M/s. Deepak Spinners Limited,
16, Hare Street,
Kolkata-700 001**
 - (2) **Assistant Commissioner of Income Tax,
Circle-11, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**
 - (3) **Commissioner of Income Tax (Appeals)-XII, Kolkata;**
 - (4) **Commissioner of Income Tax- ,**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.