

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA.No.1194/Del./2015
Assessment Year 2011-2012

The Asst. Commissioner of Income Tax, Rohtak Circle Rohtak.	vs	M/s. Micro Turners, Hissar Road, Rohtak. PAN AABFM1796J
(Appellant)		(Respondent)

For Revenue :	Shri S. R. Senapati, Sr. D.R.
For Assessee :	Shri Gautam Jain, Advocate.

Date of Hearing :	05.03.2018
Date of Pronouncement :	07.03.2018

ORDER

PER BHAVNESH SAINI, J.M.

This departmental appeal is directed against the order of the Ld. CIT(A), Rohtak, dated 30th December, 2014, for the A.Y. 2011-2012, on the following ground :

"On facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.7,44,41,112/- made by the Assessing Officer on account of reduction of claim u/s 80IC as against the claim of deduction of Rs.14,54,21,467/- as the Ld. CIT(A) has completely

disregarded the observations of the A.O. that by diverting more profits towards non exempt units, the assessee had diverted profits towards exempt units and had not examined the issue while coming to conclusion. "

2. The facts of the case are that assessee-firm is dealing in manufacturing of precision turned parts at Rohtak and Branches at Gurgaon, Chakan, Barotiwala, Pantnagar and Haridwar and Units at Barotiwala, Pantnagar, Nalagarh and Haridwar are located in exempted zones. Bulk of purchases are made at Head office at Rohtak and after doing certain operations, the semi-finished items are sent to other units for further operations as all the operations are not practicable in any of the unit as different types of machines are installed in different units. A detailed note on the activities/operations undertaken at different units are placed in the paper book. Separate books of account are maintained in all the units which are also audited as per law. The A.O. calculated the income of exempted unit by calculating total turnover of all the units of assessee-firm and total profit declared by all the units and

reduced the deduction under section 80IC of the Act by an amount of Rs.7,44,41,112/-.

3. The assessee challenged the order of the A.O. before Ld. CIT(A). It was submitted that in A.Y. 2009-2010 the Ld. CIT(A) deleted the addition which have been confirmed by the ITAT. It was also submitted that the exempted units are doing job-work which is manufacturing activity and job-work income earned from manufacturing is also covered under section 80IC of the I.T. Act. It was also submitted that these incomes are generated out of manufacturing activity. The short and excess is the difference in billing and payments made and as such the income derived is from industrial undertaking. The Ld. CIT(A) considering the profit element also noted that there has been no investigation or specific exercise to show that the amount claimed as deduction under section 80IC of the Act was wrong. The Ld. CIT(A) following the order of his predecessor for A.Y. 2009-2010, allowed the appeal of the assessee and deleted the

addition of Rs.7.44 crores. The appeal of assessee has been allowed.

4. The Learned Counsel for the Assessee submitted that in A.Y. 2010-2011, the Department on the same ground filed the appeal before the Tribunal in ITA.No.2369/Del./2014 which have been dismissed by the Tribunal vide order dated 9th August, 2016. The findings of the Tribunal in paras 7.1 to 9 are reproduced as under :

“7.1 After going through the findings of the Ld. CIT(A), as aforesaid, we are of the view that the AO has reduced the deduction admissible u/s. 80 IC of the IT Act by Rs.10,04,37,557/- on the ground that out of the 3 exempted and 3 non-exempted units owned by the assessee in different states the maximum N.P. rate for a taxable unit was 6.90% while that for an exempted unit the minimum NP rate was 13.4%. We further find that the AO held that all units derive income from the same business activity and therefore, the gap between the profits of the taxable units and non exempted units "appears" to be unrealistic. Reference has also been made to transactions made in respect of purchases and job work expenses made with related concerns or units of the assessee's firms. Taking all these factors into account the AO has stated that no evidence in

respect of manufacturing, trading and P&L a/c have been submitted during the assessment proceedings. However, the assessee has produced all the books of accounts and vouchers before the AO during the assessment proceedings. In fact, no show cause query was issued by the AO on this account during the assessment proceedings. The AO has not considered the fact that the units in exempted zones are mainly engaged in manufacturing on job work basis where there is either negligible or no input cost of raw material involved. It was noted that if the sales were made using their own raw material, there would be substantial difference in the GP rate insofar as, if the cost of raw material was excluded, the GP rate in all the units would remain the same. The fact that the exempted unit at Haridwar has shown a loss has not been referred to by the AO. Therefore, it is clear that no profit has been diverted to this unit. It was further noted that there has been no investigation or specific exercise to show that the amount claimed as deduction u/s 80-IC was wrong. We find considerable cogency in the finding of the Ld. CIT(A) that there is no ground for disallowing claim for job work expenses for the eligibility u/s 80-IC as the same is allowable as per the decision of his Predecessor in appeal no. 467 /RTK/2011-12 for the AY 2009-10. Therefore, the Ld. CIT(A) has rightly deleted the addition 10,04,37,872/-. We also note that the addition in dispute relevant to preceding assessment year 2009-10, the Tribunal also upheld the deletion of addition by holding as under, (as mentioned at page no. 4 of the impugned order passed by the Ld. CIT(A)).

"The Ld. Commissioner of Income Tax (A), it is seen, Ld. CIT(A) has followed the principle of consistency in deleting the addition made by the AO. No changes in facts from the earlier years have been brought on record. Moreover, the Id. CIT(A) has followed the decision of Delhi Tribunal, Third Member, Delhi in the case of DCIT vs. Delhi Press Samachar Patra 103 TTJ (Del) 45 wherein it was held that apportionment of expenses between different units without any investigation and collection any material is arbitrary."

7.2 We further note that ITAT, Delhi 'F' Bench in assessee's own case for the assessment year 2005-06 in ITA No. 554/Del/2009 vide order dated 17.9.2009 has upheld the order of the Ld. CIT(A) by citing the exactly the same case law of the ITAT i.e. DCIT vs. Delhi Press Samachar Patra 103 TTJ (Del) 45 (Supra).

8. In the background of the aforesaid discussions and respectfully following the precedents of the Coordinate Bench in assessee's own case relevant for the assessment year 2005-06 and 2009-10, we are of the considered view that the Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, we uphold the same.

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

5. The Ld. D.R. also stated that the issue is covered in favour of the assessee by the order of the ITAT above.

6. Considering the facts of the case in the light of the Order of the Tribunal dated 9th August, 2016 (supra), we are of the view that the issue is covered in favour of the assessee by the order of the Tribunal. The Departmental Appeal has no merit and the same is accordingly dismissed.

7. In the result, Departmental Appeal is dismissed.

Order pronounced in the open Court.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Delhi, Dated 07th March, 2018
VBP/-
Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.