

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI**

**BEFORE SH. R. K PANDA, ACCOUNTANT MEMBER  
AND  
MS. BEENA A. PILLAI, JUDICIAL MEMBER**

ITA No. 734/DEL/2014  
Assessment Year: 2007-08

ACIT, CIRLCE-13(1), NEW DELHI  PAN: AAACO6963D <b>(APPELLANT)</b>	Vs	M/s Origin Express (I) North Pvt. Ltd., 18/5, Amar Chambers, WEA Arya Samaj Road, Karol Bagh, New Delhi -110005 <b>(RESPONDENT)</b>
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Appellant by	Shri S. R. Senapat, Sr. DR
Respondent by	None

Date of hearing:	21/02/2018
Date of Pronouncement:	/03/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 28.11.2013 of the CIT(A)-16, New Delhi relating to A.Y. 2007-08.

The grounds raised by the assessee are as under :

1. *On the facts & in the circumstances of the case the Ld, CIT(A) has erred in allowing the appeal of the assessee on the issue of rejection of books of accounts by the assessing officer without appreciating the acceptance of the assessee during assessment proceedings that the records were not traceable as the business was closed.*

1.1 *On the facts & in the circumstances of the case the Ld. CIT (A) has erred in allowing the*

*appeal of the assessee on the above issue without appreciating the fact that correctness and completeness of the books of account remained un-established and unverifiable due to non production of books of accounts along with supportive bills and vouchers.*

1.2 *On the facts & in the circumstances of the case the Ld. CIT (A) has erred in allowing the appeal of the assessee on the above ignoring the comments of the assessing officer during the remanding proceedings.*

2. *On the facts & in the circumstances of the case the Ld. CIT (A) has erred in reducing the disallowance of expenses from Rs. 28,67,101/- to Rs. 15,24,228/- under the head telephone and rent expenses without appreciating the fact that the assessee could not furnish documentary evidence in this regard during assessment proceedings.*

3. *On the facts & in the circumstances of the case the Ld. CIT (A) has erred in directing the assessing officer to allow the business loss of Rs. 42,53,547/- without appreciating the fact that the returned income could not be quantified since the assessee could not furnish copy of the return and computation of income during assessment proceedings.*

4. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal.

2. None appeared on behalf of the assessee when the name of the assessee was called. It was observed from the order sheet entries that the assessee has never appeared on the earlier occasions when the case was fixed earlier. Under these circumstances and considering the totality of the facts of the case we proceed to decide the appeal on the basis of material available on record and after hearing the Ld. DR.

3. Facts of the case, in brief, are that the assessee is a non Government company engaged in the business of share trading. It filed its return of income on 15.11.2007 declaring total income of Rs. Nil. It appears from the assessment order that there was repeated non compliance from the side of the assessee. Towards the fag end of the month of December, the AR of the asseesee appeared and filed copy of balancesheet and profit and loss on account and requested for

adjournment. Thereafter, there was non compliance again. In absence of production of books of accounts for his verification the Assessing Officer presumed that the books of accounts are not complete and unrealizable. He, therefore, rejected the book results by invoking the provisions of section 145 (3) and determined the total income of the assessee at Rs. 28.67,101/- by making the following disallowance :

i)	Disallowance on account of Telephone expenses:	Rs.6,73,639/-
ii)	Disallowance on account of Rent expenses:	Rs.11,22,790/-
iii)	Disallowance of Bad debts :	Rs 1,50,747/-
iv)	Disallowance of Rebate & Discount:	Rs4,19,925/-
v)	Disallowance of Operating Cost:	<u>Rs5,00,000/-</u>
	TOTAL	<u>Rs.28,67,101/-</u>

4. Before CIT (A) the assessee appeared and challenged the various additions made by the Assessing Officer. An additional ground for non consideration of brought forward loss of Rs. 9,99,953/- was also filed. So far as rejection of books of accounts is concerned the assessee interalia in writing submitted before the CIT (A) that the accounts of the assessee are audited by the statutory auditors and tax auditors. The director of the assessee Mr. Rajesh Gupta, who was looking after the account expired on 24.05.2008 and thereafter the business was shutdown and the employees have left and the books of account are not traceable. It was argued that under these circumstances books of account should not be rejected. The assessee further in its rejoinder to the remand report submitted that due to a fire in the office of the company on 18.06.2007 all the computers and most of the accounts were destroyed. The various additions made by the Assessing Officer were also challenged.

5. Based on the arguments advanced in the assessee, the Id CIT (A) held that the Assessing Officer is not justified in rejecting the books of account although the same were not produced before him. He also deleted the various additions made by the Assessing Officer.

6. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

7. We have heard the arguments made by Ld. DR and pursued the orders of

the Assessing Officer and the Ld. CIT (A). We find the order of the CIT (A) is a perverse one. The Assessing Officer had repeatedly asked the assessee to produce all relevant necessary details as per the questionnaire. In absence of production of books of accounts the Assessing Officer proceeded to complete the assessment by rejecting the books of account. Under the peculiar facts and circumstances and in absence of production of the relevant details, the CIT (A) in our opinion is not justified in allowing the appeal filed by the assessee challenging the rejection of books of account and deleting the various additions made by the Assessing Officer. We, therefore, reverse the order of the CIT (A) and restore the order of the Assessing Officer. The grounds raised by revenue are accordingly allowed.

8. In the result the appeal filed by the revenue is allowed.
9. Pronounced in the open court on .03.2018.

**(BEENA A. PILLAI)**  
**JUDICIAL MEMBER**

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

*\*NEHA\**

*Date:- .03.2018*

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1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date	
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2.	Draft placed before author	01.03.2018	PS
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8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

This appeal filed by the assessee is directed against the order dated \_\_\_\_\_ of the CIT(A), New Delhi relating to A.Y. 2007-08.

2. Facts of the case, in brief, are that the assessee's company is engaged in the business of manufacturing of mustard oil, cattle feed, khal & trading of refined oil. It filed its return of income on 31.10.2007 declaring income of Rs. 22,53,564/-. During the course of assessment proceedings the Assessing Officer noted that the assessee has not attributed any expenses of corporate office to its Damtal Unit. As the business and corporate affairs are governed by the assessee's corporate office and payment of salary etc. of Directors are made from the corporate office, part of corporate office expenses should have been allocated to the Damtal Unit also. He, therefore, asked the assessee to explain as to why corporate office expense not allocated to Damtal Unit should not be disallowed out of deduction u/s. 80IB of the Act. Rejecting the explanation given by the assessee, the Assessing Officer attributed an amount of Rs. 16,24,341/- out of total corporate expenses of Rs. 40,81,370/- to Damtal Unit and reduced the same from its profit on which deduction u/s. 80IC of the Act was claimed.

4. The Assessing Officer further noticed that assessee has received VAT incentive of Rs. 27,65,085/- in respect of Damtal Unit. On being questioned by the Assessing Officer, it was contended that it has received VAT incentive which is part of profit of industrial undertaking and as such the same has not been reduced from computation of profit eligible for deduction u/s 80IC of the Act. However, the Assessing Officer rejected the same on the ground that VAT incentive is an incentive given by the Government and cannot be said to be profit derived from the industrial undertaking. According to him Section 80IC clearly provides that deduction under that Section will be allowed in respect of any profit and gain ~~derived~~ by the undertaking.

7. Relying on various decisions, he held that VAT incentive received by the assessee is not part of profit derived by the undertaking and is not eligible for deduction u/s 80IC of the Act. Accordingly, he reduced the deduction u/s 80IC of the Act claimed by the assessee by Rs.27,65,085/- on account of VAT incentive.

8. In appeal the Ld. CIT (A) upheld the action of the Assessing Officer in reducing the allocation of Rs. 16,24,341/- from the deductions u/s. 80IC of the Act on account of corporate office expenses attributable to Damtal Unit. So far as the reduction of VAT incentive of Rs.

27,65,085/- is concerned, he also held that the Assessing Officer was fully justified in disallowing the claim of the assessee u/s. 80 IC of the Act. The relevant observation of the CIT (A) at para 3.2 of his order read as under :

*I have carefully considered the submission made by the appellant and perused the assessment order passed by the AO. It is seen that the appellant has received VAT incentive of Rs.27,65,085/- in respect of Dantal Unit. The profits from VAT incentive belong to the category of ancillary profit of such undertaking. The VAT incentive cannot be treated as income derived from sale of goods manufacture by the appellant. Therefore, the profit belongs to the category of ancillary profit and not a direct profit from the manufacturing which is envisaged under section 80IC. The AO has given cogent reasons for making the disallowance. The Hon'ble Apex Court in the case of Liberty India vs. CIT (Supra) has held that in order to be eligible for deduction u/s 80IA/80IB, there has to be first degree income which is directly derived from the manufacturing. The ITAT Jodhpur Bench in the case of Income Tax Officer Vs. VJ Home (P) Ltd. (Supra) has held that any incentive cannot be treated as having been derived from eligible undertaking. The decision in the case of CIT Vs. Arvind Construction Ltd. and CIT Vs. Sportking India Ltd. (supra) cited by the Ld. AR are not applicable to the facts of the appellant's case as they were decided on*



*altogether different facts. In view of the facts of the case and legal position on the issue, I hold that the AO was fully justified in disallowing the claim of the appellant u/s 80IC of the Act. Therefore, I confirm the addition made by the AO. These grounds of appeals are rejected.*

9. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds :

- 1. That the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)] has erred in confirming the deduction u/s 80IC at Rs.1,35,02,908/- as allowed by the Ld. AO, as against Rs.1,78,92,334/- claimed by the assessee. The above disallowance, as made, is based on erroneous views and / or non-appreciation of the facts and law involved, without properly considering the material on record and as such the same is unwarranted and not capable of being sustained.*
- 2. That the Ld. CIT(A) has erred on facts and in law in confirming the allocation of Rs.16,24,341 /- (out of expenses at corporate office under the head administrative and personnel expenses of Rs. 26,50,762/- and of Rs. 4,72,971/- respectively), to Damtal unit which is eligible for deduction u/s 80IC of the Act. Without prejudice to the aforesaid claim of the assessee, in any case the allocation of the said expenses to Damtal unit is excessive, inappropriate and deserves to be substantially reduced if not deleted.*
- 3. That the Ld. CIT(A) has erred on facts and in law in confirming the reduction of VAT incentive of Rs. 27,65,085/- from the eligible profit while calculating the deduction u/s 80IC on the ground that*

*the same is not derived from the undertaking. VAT/Sales tax realized on sales from customers, in view of precedents of the Apex Court, forms part of turnover of the assessee and is the profit derived from the undertaking. The said amount of VAT incentive is the amount of difference between the VAT realized from customers and the amount actually deposited by the assessee. The benefit of deduction u/s 80IC cannot be denied on the said VAT incentive.*

4. *That the Ld. CIT (A) has erred on the facts and in law in not directing the Ld. AO to allow the MAT credits u/s 115JAA, available to the appellant as per record.*
5. *That the Ld. CIT (A) has erred on facts and in law in not deleting the interest charged u/s 234B of Rs.1,86,726 /-*
6. *That the grounds of Appeal as herein are without prejudice to each other.*
7. *That the appellant respectfully craves leave to add, amend, alter and/or forego any ground(s) at or before the time of hearing.*
8. The assessee has also raised the following additional grounds :-

*That without prejudice to other grounds of appeal, if the VAT incentive is held to be not eligible for deduction under section 80IC, in the alternative it is claimed, that the object and purpose of VAT Incentive Scheme being*

*to promote the setting up and growth of industry in Himachal Pradesh State, the same is a capital receipt to be excluded both from the appellant's business income and total income. The VAT incentive is a non taxable capital receipt as held by Hon'ble Gujarat High Court in the case of CIT v. Birla VXL Ltd. 2013 TIOL-229.*

9. Referring to the decision of Hon'ble Supreme Court in the case of NTPC Ltd Vs. CIT, he submitted that the additional ground is a legal one and no fresh facts are required to be investigated and therefore, the same should be admitted for adjudication.

10. After hearing both the sides and considering that the additional ground is a legal one and since all facts are available on record and no fresh facts are required to be investigated, the same is admitted for adjudication.

11. The Ld. Counsel for the assessee at the time of hearing did not press the ground relating to allocation of Rs. 16,24,341/- out of the corporate expenses attributable to Damtal Unit for claim of deduction of u/s. 80 IC. Therefore, ground appeal No. 2 is dismissed as not pressed.

12. Ground of appeal No.1 being general is dismissed. So far as ground of appeal No. 3 is concerned the same relates to the deduction u/s. 80IC on account of VAT incentive to Rs. 27,65,085/-. It is the

submission of the Ld. Counsel for the assessee that VAT is part of the trading activity. Referring to the order of the CIT (A) for A. Y. 2008-09, copy of which is placed at page No. 89 to 97 of the paper book, the Ld. Counsel for the assessee submitted that the Ld. CIT (A) following the decision of Hon<sup>ble</sup> Delhi High Court in the case CIT Vs. M/s. Dharampal Prem Chand has directed the Assessing Officer to allow the VAT incentive to the assessee while computing deductions u/s. 80IC. Referring to the copy of the order of the CIT (A) of A. Y. 2009-10, copy of which is placed at page No. 98 to 106 of the paper book, he submitted that the Ld. CIT (A) again, following the decision of the Delhi Bench of the Tribunal in the case of M/s. First Flexi Pack Vs. DCIT and the decision of Hon<sup>ble</sup> Mumbai Tribunal in the case of M/s. Diamond Tool Industries and the decision of Hon<sup>ble</sup> Delhi High Court in the case of CIT Vs. Dharampa Prem Chand Limited (Del) 317 in ITR 353, decided the issue in favour of the assessee on the issue of deductions u/s 80IC on VAT incentive. Referring to the decision Hon<sup>ble</sup> Supreme Court in the case of CIT Vs. Meghalay Steel Limited 2016 CTR (SC) he submitted that the Hon<sup>ble</sup> Supreme Court in the said decision has held that transport subsidy, interest subsidy, power subsidy and Insurance subsidy are revenue receipts which are reimbursed to the assessee for

elements of cost relating to manufacture and sale of its products. There is certainly a direct nexus between the profits and gains of the Industrial undertaking or business and such subsidies qualify and therefore the amount received by the assessee as subsidies qualify for deduction u/s. 80IB & 80IC. He accordingly submitted that the issues stands squarely covered in favour of the assessee. Referring to the additional ground he submitted that such VAT incentive is a capital receipt to be excluded from the assessee's business income and total income.

13. The Ld. DR on the other hand heavily relied upon the order of the CIT (A).

14. We have considered the rival submission made by both the sides, perused the orders of the Assessing Officer and the CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the only issue to be decided in this appeal is as to whether the VAT incentive received by the assessee is to be treated as part of the trading activity and profit of the business and is eligible for deduction u/s. 80 IC of the IT Act. We find the Assessing Officer disallowed the claim of the assessee on the ground that VAT incentive is an incentive given by the Government and

cannot be said to be profit derived from an Industrial undertaking. We find the Ld. CIT (A) upheld the action of the Assessing Officer, the reasons of which are already given in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the Ld. CIT (A) in subsequent year i.e. A. Y. 2008-09 and A. Y. 2009-10 has already allowed such relief u/s. 80 IC on account of VAT incentive treating the same to be a part of the trading activity and the revenue is not in appeal before the Tribunal. The Ld. CIT (A) in subsequent years while allowing the claim of deduction u/s. 80IC has followed the decision of the Tribunal in the case of M/s. First Flexi Pack Corporation Vs. DCIT (ITAT Delhi) vide ITA No. 5056/D/10 and 4013/D/11 and 609/D/12, the decision of the Hon'ble Mumbai Bench of the Tribunal in the case of M/s. Diamond Tools Vs. JCIT. Since the revenue has accepted the decision of the Tribunal and has not filed any appeal against such relief granted by the CIT (A) and further observing that such reduction u/s. 80 IC has already been allowed by the Assessing Officer in subsequent assessment years in the order passed u/s.143(3), copies of which are already placed in the paper book, therefore, following the rule of consistency for subsequent years we set aside the order of the CIT (A) and direct the Assessing Officer not to reduce the VAT incentive of Rs.

27,65,085/- from the eligible profit while calculating the deduction u/s. 80IC. The ground raised by the assessee on this issue is allowed. Since the assessee succeeds on this issue the additional ground raised by the assessee is not being adjudicated.

15. In the result the appeal filed by the assessee is partly allowed.

16. Pronounced in the open court on 21.02.2018.

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

*\*NEHA\**

*Date:- 21.02.2018*

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6. Appellant
7. Respondent
8. CIT
9. CIT(Appeals)
10. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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