

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

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2202/Del/2019
(ASSESSMENT YEAR 2014-15)**

Asst. Commissioner of Income Tax Rewari Circle Rewari	Vs.	M/s Nippon Leakless Talbro Pvt. Ltd. Plot-125A, Sector-6 HSIIDC Growth Centre Bawal, Rewari. PAN-AAACC 0630J
(Appellant)		(Respondent)

Appellant By	Ms. Jeetender Chand, Senior Departmental Representative ("Sr. DR" for short)
Respondent by	Ms. Shweta Bansal, CA

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals), Rohtak [Ld. CIT(A)", for short], dated 31/12/2018 for Assessment Year 2014-15. Grounds taken in this appeal are as under:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Rohtak, has erred in allocating the sales promotion expenses and miscellaneous expenses as per the product ratio, whereas the A.O. had allocated these expenses as per the turnover basis.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) Rohtak, has erred in giving reference of the order of Hon'ble ITAT Delhi in the case of the assessee for the A.Y.2008-09, 2011-12 & 2012-13, 'that miscellaneous expenses should be allocated product ratio wise', whereas in the said order, the Hon'ble ITAT Delhi did not give any comments about the allocation of miscellaneous expenses as per product ratio.*

3. *The appellant craves leave to add, amend any ground(s) of Appeal."*

(B) During the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT" for short) written submissions were received from the assessee's side, contending that the tax effect in this appeal filed by the Revenue is below the prescribed limit of Rs.50,00,000/-; and requesting that the appeal should be dismissed on account of low tax effect having regard to CBDT Circular No.17/2019 dated 08/08/2019. The aforesaid written submissions are reproduced as under:

"1. The issue raised by the department in the impugned appeal is the allocation of sales promotion expenses and miscellaneous expenses between Haridwar Unit (Exempt Unit u/s 80IC) and Bawal Unit (Taxable Unit). As per the Ld. AO allocation of sales promotion expenses and miscellaneous expenses should be done on the basis of turnover ratio and the appellant allocated these expenses on the basis of product ratio. The Ld. CIT(A) also agreed that allocation of sales promotion expenses and miscellaneous expenses should be done on the basis of product ratio as held by Hon'ble ITAT, Delhi in the case of appellant itself for AY 2008-09, AY 2011-12 and AY 2012-13 bearing ITA No.2703, 2763, 5584/Del/2016 vide order dt. 22/12/2017.

2. The allocation of expenses done by the appellant in its P&L Account between Haridwar Unit and Bawal Unit is as under:

Nature of Expenses	Haridwar Unit	Bawal Unit	Total
Sales and Promotion expenses	1,100	1,76,891	1,77,991
Miscellaneous Expenses	18,59,023	91,39,991	1,09,99,014
Total	18,60,123	93,16,882	1,11,77,005

3. The allocation of impugned expenses as per the Ld. AO is as under:

Nature of Expenses	Haridwar Unit	Bawal Unit	Total
Sales and Promotion expenses	52,507	1,25,483	1,77,990
Miscellaneous Expenses	32,44,709	77,54,305	1,09,99,014
Total	32,97,216	78,79,788	1,11,77,005

4. In view of the above, alleged net excess expenditure claimed in the exempt unit as per the Ed. AO is Rs.14,37,093/- (32,97,216 - 18,60,123). The amount challenged by the department in this appeal is just Rs.14,37,093/-. The tax effect involved in the departmental appeal is below the limit of Rs. 50 lacs. Therefore, it is requested that the appeal of the department may kindly be dismissed in view of the CBDT Circular no. 17/2019 dt. 08/08/2019.”

(B.1) At the time of hearing before us, the learned Sr. DR for Revenue submitted that the total relief given by the learned CIT(A) was Rs.1,88,40,830/, on which the total tax effect was Rs.64,03,998/- which was more than the prescribed limit of Rs.50,00,000/-. Ms. Shweta Bansal, CA, the learned Authorized Representative (“AR” for short) for assessee, on the other hand, drew our attention to the aforesaid written submissions and contended that the appeal filed by Revenue was not maintainable

because of low tax effect. The learned AR for the assessee explained that the entire relief granted by the Ld. CIT(A) in the impugned appellate order dated 31/12/2018 was not the subject matter of this appeal. She drew our attention to the fact that the relief challenged by Revenue in the present appeal as per grounds of appeal was only Rs.14,37,093/- as highlighted in the aforesaid written submissions filed from the assessee's side.

(B.1.1) After submissions were made by learned AR for the assessee; learned Sr. DR for Revenue left the matter to the discretion of the Bench.

(B.2) Vide Circular No.17/2019 dated 08/08/2019 issued by Central Board of Direct Taxes ('CBDT', for short) read with earlier CBDT Circular No. 3 of 2018, dated 11/07/2018, minimum threshold limit of tax effect for filing of appeals by Revenue in Income Tax Appellate Tribunal ("ITAT", for short) has been enhanced to Rs. 50,00,000/-. In a subsequent clarification issued by CBDT vide F. No. 279/Misc/M-93/2018-ITJ, dated 20/08/2019, it has been clarified by CBDT that the aforesaid revised monetary limit is also applicable to all pending appeals in ITAT. The issue

before us, is whether in view of the foregoing, this appeal filed by Revenue is maintainable.

(B.2.1) We have heard both sides. We are of the view that **computation of tax effect, for the purpose of deciding maintainability of the appeal having regard to aforesaid CBDT Circulars dated 08/08/2019 and 11/07/2018; is to be based on the disputes involved in the grounds of appeal. What is relevant is the tax effect of the disputed amount of relief granted by the Ld. CIT(A); and not the entire amount of relief granted by the Ld. CIT(A).** There is no dispute that in the present case, relief granted by the learned CIT(A) and disputed by Revenue in the present appeal before us, is only Rs.14,37,093/-, although the total relief granted by the Ld. CIT(A) may be Rs.1,88,40,830/-. Therefore, having regard to CBDT Circular No.17/2019 dated 08/08/2019 read with earlier CBDT Circular No.3 of 2018, dated 11/07/2018 and with aforesaid subsequent clarification dated 20/08/2019 issued by CBDT; we are of the view that this appeal is not maintainable on account of low tax effect.

(C) Before leaving, we clarify that Revenue will be at liberty to approach Income Tax Appellate Tribunal U/s 254(2) of Income Tax Act, 1961; seeking recall of this order and restoration of this appeal; in case this appeal of Revenue is not covered by aforesaid CBDT Circulars dated 08/08/2019 and 11/07/2018.

(D) In the result, this appeal by Revenue is dismissed.

This order was already pronounced orally on 22nd November, 2022 in the Open Court, in the presence of representatives of both sides, after conclusion of hearing. Now, this written order is signed today on 28/11/2022.

Sd/-

**(SAKTIJIT DEY)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 28/11/2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI