| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
BEFORE SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4454/Mum/2024
Assessment Year: 2017-18

Sysmex India Private Limited, Mumbai 1002, Damji Shamji Business Galleria 10th Floor, LBS Road Kanjaur Marg West Mumbai - 400078 **[PAN: AADCS1551J]**	Vs	**Dy. CIT, 15(3)(2), Mumbai**
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Deepak Tikekar, C.A. & Shri Ashish Thakurdesai, C.A., A/Rs
Revenue by :	Shri Bhangepatil Pushkaraj Ramesh, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : **07/01/2025**
घोषणा की तारीख /**Date of Pronouncement:** **09/01/2025**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 04/07/2024 by the NFAC, Delhi, [hereinafter 'the ld. CIT(A)'], pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

"1. On facts, in circumstances of the case and in law, the learned CIT-A erred in confirming reworking of deduction u/s 80-IC at Rs. 2,38,28,650/- by the assessing officer, ignoring the consistent basis followed by the appellant in the past and accepted by the department.
2. On facts, in circumstances of the case and in law, the learned CIT-A ought to have held that deduction u/s 80-IC be computed @ 30% of the profit of eligible unit without setting off loss of non-eligible unit.
3. On facts, in circumstances of the case and in law, learned CIT-A ought to have deleted interest of Rs.14,03,853/- u/s 234B of the Income Tax Act, 1961.
4. On facts, in circumstances of the case and in law, learned CIT-A ought to have deleted interest of Rs.98,979/- u/s 234C of the Income Tax Act, 1961.
5. On facts, in circumstances of the case and in law, learned CIT-A ought to have deleted interest of Rs.34,218/- u/s 234D of the Income Tax Act, 1961.
6. On facts, in circumstances of the case and in law, learned CIT-A ought to have allowed interest u/s 244A.

7. The appellant craves leave to add, alter, modify or delete any of the above Grounds of Appeal."

3. Briefly stated the facts of the case are that the assessee filed its return of income on 30/11/2017 declaring total income of Rs.3,83,57,770/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the assessee was asked to substantiate the expenses incurred for both eligible and non-eligible undertaking and the basis for allocation of the same. The assessee filed detailed reply explaining as under:-

"The company has been consistently following policy as detailed below:
• Revenue from Operations and Other Income of eligible undertaking and non-eligible undertaking are allocated on actual basis.
• Wherever expenses are specifically incurred either for eligible undertaking or non undertaking, they are allocated on actual basis.
• In respect of common expenses, the same are allocated in Sales Ratio to both eligible and non-eligible undertaking.
Allocation of common expenses is a recognised method and accepted by appellate authorities. In M/s Rajasthan State Mines & Others vs. Dy. CIT ITA No. 704/JP/2018, direction was given by Hon. Jaipur Tribunal to allocate common expenditure in proportion to sales of eligible undertaking and non-eligible undertaking. Thus this basis of allocation has been approved by Judicial Authority and is prudent and rational.
This method has been followed by the assessee for past number of years consistently and accepted by the department in the past. Hence there is no reason to deviate from this rational basis in the current year even assuming it suits revenue in one year/E TAX DEPAR
Kind attention of learned A.O. is drawn to decision of Hon'ble Delhi High Court reported in C/Tvs. EHPT India (P) Ltd. (2013) 350 ITR 41 in which it was held that "Where the AO has accepted the head-count method adopted by the assessee for allocation of indirect expenses between STP unit and non-STP unit in the past but has rejected it only for the years under appeal, it would disturb or distort the profits; method adopted by the assessee has been consistently accepted by the Departmental authorities and there being no just cause for abandoning the same it could not be disturbed". The ratio of decision in this case that method of allocation of expenses consistently followed by the assessee and accepted by the department in past should not be disturbed, applies to the facts of the case of the assessee squarely.
In Principal CIT v Quest Investment Advisors Pvt Ltd (2018) 304 CTR 0637 (Bom) Hon'ble Bombay High Court has held that "If Revenue Authorities consistently over for 10 years and in subsequent 4 years accepted the principle that all expenses incurred by assessee were attributable entirely to earning professional income, then

in current assessment year no different view could be taken against assessee unless there was any change in the facts of the case.
Thus, the jurisdictional High Court has upheld the Principle of Consistency after considering the Principle of Res Judicata."

5. In addition to the above, it was explained that royalty has been paid for use of IP rights which are used for manufacturing of reagents by Baddi Unit i.e., eligible undertaking and the same has been charged to eligible undertaking. Management fees of Rs.1,91,09,954/- has been allocated in the proportion of sales between eligible and non-eligible undertaking. The interest paid on CCD of Rs.2,00,00,000/- has been allocated as under:-

Particulars	***FY 2012-13***	***FY 2013-14***	***FY 2014-15***	***FY 2015-16***
Eligible Undertaking	*164,986,277*	*169,172,428*	*181,174,188*	*229,964,858*
Non-Eligible Undertaking	*9,762,127*	*13,317,885*	*103,221,356*	*227,732,877*
Total Revenue	***174,748,404***	***182,490,313***	***284,395,544***	***457,697,735***

6. Similarly, remuneration to Mr. Anil Prabhakaran was allocated on the basis of sales. The allocation was not accepted by the AO who was of the firm belief that management fees and renumeration paid to managing director has to be allocated on gross profit basis and accordingly re-allocated the same.

7. The assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. Counsel for the assessee vehemently stated that the allocation has been done by the assessee since past many years which have been accepted by the revenue. Therefore, there is no basis for breaching the rule of consistency.

8.1. Per contra, the ld. D/R strongly supported the findings of the AO.

9. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. Counsel for the assessee. The basis of allocation is being accepted by the AO since past assessment years. The assessment orders are placed in the paper book which we have duly considered. Therefore, we do not find any merit in the action of the AO which is in breach to the Rule of consistency. We accordingly direct the AO to accept the basis of allocation made by the assessee and allow Ground No. 1.

10. The next issue is set off of loss of non-eligible unit to the profit of eligible unit and thereafter computing the deduction u/s 80IC of the Act. The Co-ordinate Bench in the case of *Milestone Gears Private Limited vs. The ACIT in ITA Nos. 883 to 885/Chd/2017,* had considered such issue and held as under:-

> *"17. As per section 80IC(7), the provisions of section 80IA(5) have been made applicable to the undertaking or enterprises eligible for deduction u/s 80IC of the Act. And, section 80IA(5) begins with a notwithstanding clause . Thus when provisions of section 80IC are read alongwith the provisions of section 80AB of the Act, we find that section 80IC of the Act clearly provides that its provisions are to prevail over the provisions of section 80AB of the Act which was absent in the case of section 80HHC, as noted by the Hon'ble Apex Court in the case of IPCA Laboratories Ltd. (supra). Therefore, the proposition laid down by the Hon'ble Jurisdictional High Court in the case of Him Teknoforge Ltd. (supra) that the profits and losses of the priority units are to be clubbed for calculating eligible deduction under Chapter VI A having been borrowed from the law laid down by the Hon'ble Apex Court in the case of IPCA Laboratories Ltd. (supra), which is clearly distinguishable from the present case, as pointed out above, the same will not apply to deduction claimed u/s 80IC of the Act. As stated above, the provisions of section 80IC will prevail over section 80AB of the Act and the deduction will have to be calculated as provided for in section 80IC(7) of the Act, as per which for the purpose of determining the quantum of deduction the eligible undertaking is to be treated as the only source of income of the assessee during the previous year, thus treating each eligible undertaking or enterprise as a separate unit for the purpose of calculating deduction.*
> *18. Even otherwise as correctly pointed out by the Ld. Counsel for the assessee, while the decision in the case of Him Teknoforge Ltd. (supra) was rendered in the context of section 80IA, the assessee in the present case has claimed deduction u/s 80IC and the relevant provisions of two sections which deal with the calculation of quantum of deduction are differently worded in the two sections having an impact of the interpretation of the same.*

19. Section 80IA(5) states that the profits and gains of eligible "business" shall be computed as if such eligible "business" were the only source of income of a during previous years. Thus section 80IA(5) applies to eligible "business", the meaning for which can be gathered from section 80IA(1) wherein business carried out by eligible undertaking have been referred to as eligible business. Section 80IC, on the other hand, has no reference to business and uses only the work "undertaking or enterprise". This distinction, in our view, is very critical and important. Literally interpreting the applicability of the provisions of section 80IA(5) is "business specific" and, therefore, includes all eligible undertakings carrying out eligible business. On the other hand, section 80IC(7) states that the provisions of section 80IA(5) would apply to eligible undertaking or enterprises meaning thereby that the word 'business' used in section 80IA(5) is to be substituted with eligible undertaking. Therefore, for the purpose of section 80IC(7), we agree with the Ld. counsel for assessee, it is the profits of each eligible undertaking which are to be treated and taken separately as being the only source of the income during the impugned year and allowed deduction thereof as opposed to treating the eligible business of all eligible undertakings u/s 80IA(5) of the Act as being the only source of income for the impugned years as stipulated u/s 80IA(5) of the Act.

20. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. Every word of a statute has to be assumed to have been deliberately and consciously incorporated therein by the legislature and if the language of a statute is clear and explicit, effect must be given to each word. The Hon'ble Apex court has time and again reinforced this rule of interpretation of statutes in its judgements, right from Padmasundara Rao vs State of TN 255 ITR 147(SC), Mohammad Vs CWT 224 ITR 672(SC) & Pandian Chemicals Ltd. vs CIT 262 ITR 278(SC).In view of the same since the words used in section 80IC categorically state that the provisions of sub section 5 to section 80IA shall apply to the eligible undertaking or enterprise, they have to be read as such and applied to each undertaking, meaning thereby that the profits of each eligible undertaking has to be treated as if it were the only source of income of the assessee.

21. Further as rightly pointed out by the Ld. counsel for assessee that if the interpretation given in the case of Him Teknoforge Ltd. (supra) is applied for the purpose of section 80IC, it would lead to an anomalous situation creating a difficulty for calculating the quantum of deduction, since as rightly pointed out by the Ld. counsel for assessee, the section provides for different rates of deduction of profits for different years in case of specific undertakings and if netting of profits and losses of all eligible undertakings are resorted to, as laid down in the decision of Him Teknoforge Ltd. (supra), in a situation where the different eligible units are entitled to different rates of deduction of profits, it would be difficult to determine the rate to be applied to the remaining profits since there is no section or provision in the entire Act dealing with such a situation. We therefore, agree with the Ld. counsel for assessee that the decision in the case of Him Teknoforge Ltd. (supra) having been rendered in the context of section 80IA does not apply in the present case which deals with deduction u/s 80IC of the Act and since as per section 80IC it is the profit on each undertaking which is to be treated as separately, the profits and losses of all the eligible undertakings are not to be netted for the purpose of calculating deduction u/s 80IC and are to be taken on a stand alone basis.

22. In view of the above, we direct the A.O. to allow deduction to the assessee u/s 80IC with respect to the profits earned by the assessee from the eligible undertakings

ignoring the losses from other eligible undertakings. Ground of appeal No.1 raised by the assessee is allowed."

11. The Hon'ble High Court of Delhi in the case of *CIT vs. Dewan Craft Systems Pvt. Ltd. (2008) 297 ITR 305 (Del.)*, held as under:-

"In view of overriding provisions of sub-s. (7) of s. 80-IA, deduction under s. 80_IA cannot be restricted by adjusting the profits of the eligible unit against the losses of other units of the assessee."

12. Considering the judicial precedents *(supra)*, we direct the AO to allow deduction u/s 80IC @ 30% on the profit of eligible unit without any set off.

13. Levy of interest is mandatory. The AO is directed to levy interest as per the provision of law.

14. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 9th January, 2025 at Mumbai.

Sd/-	***Sd/-***
(SUNIL KUMAR SINGH)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 09/01/2025
SC SPS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , **आयकर अपीलीय अधिकरण, मुंबई** /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ **BY ORDER,**
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai