

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5756/Del/2013
Assessment Year : 2007-08**

DCIT (LTU), New Delhi.	Vs.	International Tractors Ltd., Sonalika House, 283, AGCR Enclave, Karkardooma, Delhi.
		PAN : AAACI2270H
(Appellant)		(Respondent)

**C.O. No.130/Del/2014
(In ITA No.5756/Del/2013)
Assessment Year : 2007-08**

International Tractors Ltd., Sonalika House, 283, AGCR Enclave, Karkardooma, Delhi.	Vs.	DCIT (LTU), New Delhi.
PAN : AAACI2270H		
(Appellant)		(Respondent)

**ITA No.6239/Del/2013
Assessment Year : 2008-09**

DCIT (LTU), New Delhi.	Vs.	International Tractors Ltd., Sonalika House, 283, AGCR Enclave, Karkardooma, Delhi.
		PAN : AAACI2270H
(Appellant)		(Respondent)

Department by	:	Shri Arun Kumar Yadav, Sr.DR
Assessee by	:	Shri B. D. Bansal, CA Shri Sumit Kumar Bansal, CA
Date of hearing	:	16-07-2018
Date of pronouncement	:	23-07-2018

PER R. K. PANDA, AM :

ITA No.5756/Del/2013, A.Y. 2007-08 (By Revenue) :

2. Ground no.1 by the Revenue reads as under :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in deleting disallowance of depreciation of Rs.3,72,466/- holding that UPS and computer peripherals etc. are entitled for depreciation @ 60%.”

3. Facts of the case, in brief, are that the assessee is an individual engaged in the business of manufacturing and assembling of Tractors. It filed its return of income on 30.10.2007 declaring total income of Rs.147,83,25,740/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed depreciation of Rs.5,40,668/- at the rate of 60% on UPS and computer peripherals. He, therefore, confronted the assessee to explain as to why the depreciation should not be restricted to 15%. Rejecting the various explanations given by the assessee and reclassifying the UPS and computer peripherals as plant and machinery he allowed the depreciation at the rate of 15%.

4. In appeal, the Id. CIT(A) following the decision of the Hon'ble Delhi High Court in the case of CIT vs. BSES Yamuna Power Ltd. reported in (2010) TIOL 636 allowed the depreciation at the rate of 60% by holding that the UPS and computer peripherals etc. are entitled for depreciation at the rate of 60%.

5. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

6. We have considered the rival arguments made by both the sides and perused the material available on record. We find identical issue had come up

before the Tribunal in assessee's own case in the immediately preceding assessment year. We find the Tribunal vide ITA No.3660/Del/2013 order dated 09.01.2014 following the decision of the Hon'ble Delhi High Court in the case of BSES Yamuna Power Ltd. (supra) and in the case of CIT vs. Orient Ceramics & Industries Ltd. (2011) TOIL 6/056 DTR 0397 has allowed depreciation at higher rate on computer accessories and UPS and the appeal filed by the Revenue has been dismissed. Since the Id. CIT(A) in the present appeal while granting higher rate of depreciation at the rate of 60% on computer accessories and UPS has followed the decision of the Hon'ble Delhi High Court in the case of BSES Yamuna Powers Ltd. (supra), therefore, in absence of any contrary material brought to our notice, the order of the Id. CIT(A) on this issue is upheld and the ground raised by the Revenue is dismissed.

7. Ground no.2 by the Revenue reads as under :-

"2. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in deleting addition of disallowance of Rs.7,61,523/- made u/s 14A holding that no expenses could be attributed for earning dividend income in the current year."

8. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee has received dividend income of Rs.76,15,231/- which was claimed as exempt. He, therefore, asked the assessee to explain as to why the expenses relevant to the earning of

dividend should not be disallowed u/s 14A of the I.T. Act. The assessee submitted that no expenses have been incurred for earning the dividend income. However, the Assessing Officer was not satisfied with the explanation given by the assessee on the ground that the administrative as well as financial expenses have to be incurred for the purpose of earning of dividend income. He, therefore, estimated such expenses at 10% of the dividend income and accordingly made addition of Rs.7,61,523/- to the total income of the assessee.

9. In appeal, the Id. CIT(A) deleted the addition on the ground that the assessee has made investment in the units of LIC Mutual Funds from its own funds and no borrowed funds were utilized for the purpose of such investment. According to him, the dividend is accumulated on daily basis in the account of the assessee and the same is reinvested in further units of the LIC Mutual Funds automatically. Therefore, no efforts either administrative or supervisory need to be undertaken by the assessee for this investment on daily basis. Therefore, the provisions of section 14A are not applicable. He further noted that in the immediately preceding assessment year, the Id. CIT(A) had reduced the disallowance u/s 14A to 5% of the dividend income. However, in the present year, no expenses can be attributable for earning of the dividend income. He accordingly deleted the entire addition.

10. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

11. After hearing both the sides, we find the Assessing Officer disallowed an amount of Rs.7,61,523/- by invoking the provisions of section 14A on account of administrative and supervisory expenses incurred by the assessee for earning the exempt dividend income of Rs.7,61,523/-. We find the Id. CIT(A) deleted the disallowance on the ground that no efforts either administrative or supervisory need to be undertaken by the assessee for the investment in the units of the LIC Mutual Funds, the dividend of which is accumulated on daily basis and the same is reinvested. We find in the immediately preceding assessment year, under similar facts the Id. CIT(A) had restricted the disallowance to 5% of the derived income. On a pointed query by the Bench as to how it cannot be said that nobody has applied his mind for purchase of the units of the LIC Mutual Funds after selling of 2,09,072 equity shares to M/s 3i-ITL Investment Limited, the Id. counsel for the assessee fairly admitted that somebody has definitely applied his mind for sale of the shares and subsequent investment of the proceeds in mutual funds. Under these circumstances, it cannot be said that no administrative or supervisory effort has been undertaken. Considering the totality of the facts of the case, we are of the considered opinion that some expenditure must be attributed towards earning of the dividend income.

However, the disallowance at the rate of 10% of the dividend income by the Assessing Officer appears to be on the higher side. Considering the totality of the facts of the case, we are of the considered opinion that the disallowance of 5% of the dividend income towards administrative expenses will be justified under the facts of the case. We, therefore, restrict the disallowance to 5% of the dividend income. The ground raised by the Revenue is accordingly partly allowed.

12. Grounds no.3 to 6 by the Revenue read as under :-

“3. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of Rs.1,07,33,164/- u/s 80JJA when the assessee not only failed to make such claim of deduction in the return of income but also failed to substantiate the same with documentary evidence in assessment proceedings.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of Rs.1,07,33,164/- u/s 80JJAA on the basis of additional evidence admitted during appellate proceedings without writing the reasons for its admission and without granting an opportunity to the Assessing Officer.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of expenses of Rs.25,40,305/- out of the claim of deduction of expenses of Rs.51,21,024/- (shown as prior period expenses in A.Y. 2008-09) when the assessee not only failed to make such claim of deduction in the return of income but also failed to substantiate the same with documentary evidence in assessment proceedings.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of Rs.25,40,305/- out of the claim of deduction of expenses of Rs.51,21,024/- (shown as prior period expenses in A.Y. 2008-09) on the basis of additional evidence admitted during appellate proceedings without writing the reasons for its admission and without granting an opportunity to the assessing officer.”

13. Facts of the case, in brief, are that during the course of assessment proceedings on 14.12.2009, the assessee submitted a statement of revised

taxable income before the Assessing Officer wherein it claimed deduction u/s 80JJAA of Rs.1,07,33,164/- and prior period expenditure of Rs.51,21,024/-. However, the Assessing Officer was not satisfied with the above claim made by the assessee. He referred to the provisions of section 139(5) according to which the assessee can furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier if he discovers any omission or any wrong statement therein having furnished a revised return under sub-section (1) of section 139 or in pursuance of a notice issued under sub-section (1) of section 142. However, in the instant case the due date for filing the revised return has already expired. Relying on the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. reported in 284 ITR 323, he held that no claim can be entertained by the Assessing Officer without filing the revised return. He further noted that the assessee has not substantiated with documentary evidence that it is eligible for deduction u/s 80JJA and liability of Rs.51,21,024/- was incurred in this assessment year. Thus, on merit the claim of the assessee fails. In view of the same, the Assessing Officer rejected the deduction claimed u/s 80JJA and the prior period expenses.

14. In appeal, ld. CIT(A) following various decisions including the decisions of the Hon'ble Bombay High Court in the case of CIT vs. Pruthvi Brokers and

Shareholding P. Ltd. reported in 349 ITR 336 and in the case of CIT vs. Sheth Developers (P) Ltd. reported in 77 DTR 249, the decision of the Hon'ble Allahabad High Court in the case of Raj Rani Gulati vs. CIT reported in 346 ITR 543 and various other decisions held that the assessee can make a fresh claim before the Id. CIT(A).

15. So far as claim u/s 80JJAA and the prior period expenses are concerned, he examined the details furnished before him and allowed the claim of the assessee u/s 80JJA an amount of Rs.25,40,305/- out of prior period expenses.

The relevant observation of the Id. CIT(A) read as under :-

“6.7.2 Regarding the claim u/s 80JJAA, the appellant filed before me, a copy of the audit report in prescribed form no.10DA, which was duly certified by Chartered Accountant. According to the same, the appellant had employed new regular workmen numbering 543 over and above the existing employees numbering 1262. The additional wages paid to the regular workmen by the appellant amounted to Rs.3,54,57,213/-. The appellant had claimed 30% of the same in the current year as per section 80JJAA amounting to Rs.1,07,33,164/-. Before me, the Ld. Counsel also furnished details of each such new regular workmen alongwith their respective dates of joining service, period of service during the current year, respective bank accounts in which remuneration was paid and had thereby given breakup of the allowable additional wages paid during the year. On examination of the same, I hold that the claim by the appellant u/s 80JJAA was correct, accordingly, the same is being allowed.

6.7.3 Regarding the other claim made before me relating to certain expenses classified on the 'prior period expenses' amounting to Rs.51,21,024/-, I was informed that these expenses were not claimed in the current year as till finalization of return, their details were not available. These were later claimed in subsequent year but added back in that year being 'prior period expenses' for that year. However, in terms of accounting norms, these pertained to the current year. I observe that out of the same, an amount of Rs.24,78,391/- was not allowable, as no TDS was deducted thereon and hence the claim for same was already withdrawn by the appellant u/s 40(a)(ia). Regarding the balance amount of Rs.26,42,633/-, the appellant was asked to furnish the details in respect of each item embedded in it and to justify as to why liability in respect of the same may be held to have crystallized during the current year. On examination of appellant's contention, I find that the above expenses were

booked in the next financial year as part of an amount of Rs.75,45,049/- under the head 'prior period expenses', which were added back to the taxable income in that year. A copy of the statement of income for AY 2008-09 was furnished before me in this regard, which shows that the contention of the appellant is correct. Out of the aforesaid amount of Rs.75,45,049/-, the appellant had made impugned claim of Rs.51,21,024/- in the current year by holding that the same pertained to the current year. On careful examination of the details furnished by the appellant, I find that majority of the expenses embedded in the amount of Rs.26,42,633/- were in the nature of travel expenses, etc which were based on the claim in respect of current year made by the employees in subsequent years. Since the appellant was not in receipt of the vouchers raised by the employees at the time of filling of return of income, while the same pertained to the current year, the claim of Rs.4,92,825/- in respect of the same, is accordingly allowed. However, certain bills such as bill for car MP3Player dated 30.06.2007 of Rs.3,600/-, cost of mobile phone purchased on 16.08.2007 of Rs.12,000/- and an amount of Rs.75,274/- in respect of cost consumption claimed by various clients of the appellant by raising invoices on 31.08.2007 amounting to Rs.75,274/- cannot be considered to be related to the current year. Further, Membership Fee and Subscription (advance) aggregating to Rs.11,454/- on different dates on 04.07.2007, 14.11.2007 and 19.03.2008 also does not pertain to the current year, being advance in nature. Subject to the above, the appellant's claim in respect of expenses, which were not claimed during the current year while filing the return of income (but were shown as "prior period expense" in the computation of income of AY 2008-09) amounting to Rs.25,40,305/- (Rs.26,42,633 - 1,02,328) is held as allowable in the current year."

16. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

17. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and the Id. CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. It is an admitted fact that the assessee without filing a revised return filed a revised computation of income before the Assessing Officer claiming deduction u/s 80JJA amounting to Rs.1,07,33,164/- and prior period expenses of Rs.51,21,024/-. We find the Id. CIT(A) following various

decisions held that the assessee is entitled to make a new claim before him although the same was not claimed before the Assessing Officer by filing the revised return. Such act of the Id. CIT(A) admitting new claim, in our opinion, is justified in view of the various decisions relied on by him.

18. Now coming to the merit of the case, we find the assessee had not filed the requisite details before the Assessing Officer during the course of assessment proceedings which has been clearly brought on record by the Assessing Officer in the body of the assessment order. We find although the Id. CIT(A) has examined certain details filed before him, however, he has neither called the Assessing Officer during the hearing of the appeal nor called for a remand report from the Assessing Officer. Thus, in effect the Assessing Officer was not given any opportunity of being heard before the appeal was decided in favour of the assessee. Under these circumstances, we find merit in the argument of the Id. DR that the matter should be restored to the file of the Assessing Officer with a direction to examine the details filed before the Id. CIT(A) and if found correct then to allow the deduction as per fact and law. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the details and allow the claim subject to his satisfaction. Needless to say, the Assessing Officer shall give due opportunity of being heard

to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the Revenue are allowed for statistical purposes.

19. Ground no.7 being general in nature is dismissed.

C.O. No.130/Del/2014 (By Assessee) :

20. The assessee raised following ground in its Cross Objection :-

“1. On the facts and in the circumstances of the case, the ld. CIT(A), XV- New Delhi has erred in not allowing the claim of the appellant for the higher depreciation on energy saving devices containing voltage stabilizer & UPS etc and has wrongly confirmed the order of the AO treating these as items of electrical installation. It is prayed that the claim of the appellant of depreciation @ rate of 80% may please be allowed.”

21. After hearing both the sides, we find the assessee claimed depreciation at the rate of 80% on UPS and voltage stabilizers as energy saving devices. The argument of the assessee that such UPS automatically controlled the voltage and fluctuation in the electric supply which were eligible for depreciation at the rate of 80% was rejected by the Assessing Officer who allowed depreciation at the rate of 15%.

22. In appeal, the ld. CIT(A) upheld the action of the Assessing Officer by observing as under :-

“6.2 Regarding the Ground No.1 of the appeal relating to claim of depreciation of the appellant on UPS and voltage stabilizers as energy saving devices, the appellant had claimed that the voltage stabilizer (Rs.12,47,831/-) and UPS (Rs.8,40,324/-) were in the nature of 'Power Factor Controller for AC motors', which fall under the head

'Energy Saving Devices' under Clause E(d) of the Appendix-1 (Rule-5). The contention of the appellant was that the main purpose for this instrument is to maintain regular flow of electricity and hence the same is in the nature of power saving energy device. On careful consideration of the facts of the case and keeping in view the purpose of the voltage stabilizer and UPS in the business of the appellant, in my view, both the voltage stabilizer (automatic) and the UPS ensure continuous supply of electricity and minimization of voltage fluctuation. The main output achieved through this is uninterrupted supply of electricity that requires maintaining optimum voltage for allowing the machinery to function at the optimum level throughout. Thus, the underlying objective is not to save energy but to ensure regular supply of electricity (energy). In view of the same, the claim of the appellant for allowing depreciation on the voltage stabilizer and on the UPS @ 80% is not acceptable. Accordingly, this ground of appeal is decided against the appellant."

23. Aggrieved with such order of the Id. CIT(A), the assessee filed Cross Objection, against the appeal filed by the Revenue, before the Tribunal.

24. We have considered the rival arguments made by both the sides and perused the material available on record. We find the assessee claimed deduction at a higher rate on voltage stabilizer and UPS treating them as energy saving devices. We find the Id. CIT(A) rejected the claim of the assessee on the ground that the main output achieved through the voltage stabilizer and UPS is uninterrupted supply of electricity that requires maintaining optimum voltage for allowing the machinery to function at the optimum level throughout and the objective is not to save energy but to ensure regular supply of electricity. We do not find any infirmity in the order of the Id. CIT(A) treating the UPS and voltage stabilizer as part of the electric installation. We, therefore, uphold the same and the ground raised by the assessee in its Cross Objection is dismissed.

ITA No.6239/Del/2013, A.Y. 2008-09 (By Revenue) :

25. Ground no.1 by the Revenue reads as under :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in deleting disallowance of depreciation of Rs.78,612/- holding that UPS and computer peripherals etc. are entitled for depreciation @ 60%.”

26. After hearing both the sides, we find the above ground is identical to ground no.1 in ITA No.5756/Del/2013. We have already decided the issue and the ground raised by the Revenue has been dismissed. Following similar reasoning, this ground by the Revenue is dismissed.

27. Grounds no.2 to 6 by the Revenue read as under :-

“2 On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in continuing to allow the claim of deduction of Rs. 1,07,33,164/- u/s 80JJAA from AY 2007-08 when the assessee not only failed to make such claim of deduction in the return of income for AY 2007-08 but also failed to substantiate the same with documentary evidence in assessment proceedings.

3 On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of Rs. 1,32,32,426/- u/s 80JJAA when the assessee not only failed to make such claim of deduction in the return of income for AY 2008-09 but also failed to substantiate the same with documentary evidence in assessment proceedings.

4 On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of deduction of Rs. 2,39,65,590/- (i.e. Rs. 1,07,33,164/- + Rs. 1,32,32,429/-) u/s 80JJAA on the basis of additional evidence admitted during appellate proceedings for AYs 2007-08 and 2008-09 without writing the reasons for its admission and without granting an opportunity to the Assessing Officer.

5 On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of loss on foreign exchange fluctuation amounting to Rs.37,09,017/- when the assessee not only failed to make such claim of deduction in the return of income but also failed to substantiate the same with documentary evidence in assessment proceedings.

6 On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in allowing the claim of loss on foreign exchange fluctuation amounting to Rs.37,09,017/- on the basis of additional evidence admitted during

appellate proceedings without writing the reasons for its admission and without granting an opportunity to the assessing officer.”

28. After hearing both the sides, we find the above grounds are identical to grounds of appeal in ITA No.5756/Del/2013. We have already decided the issue and the issue has been restored to the file of the Assessing Officer with a direction to verify the details and allow the claim as per fact & law. Since the assessee has made the claim through the revised computation during the impugned assessment year and not by filing the revised return, therefore, following similar reasoning, the above issues are restored to the file of the Assessing Officer with a direction to decide the issue on merit. The grounds raised by the Revenue are allowed for statistical purposes.

C.O. No.173/Del/2014 (By Assessee) :

29. The only ground raised by the assessee in its Cross Objection reads as under :-

“1. On the facts and in the circumstances of the case, the ld. CIT(A), LTU- New Delhi has erred in not allowing the claim of the appellant for the higher depreciation on energy saving devices containing voltage stabilizer & UPS etc and has wrongly confirmed the order of the AO treating these as items of electrical installation. It is prayed that the claim of the appellant of depreciation @ rate of 80% may please be allowed.”

30. After hearing both the sides, we find the above ground is identical to ground in C.O. No.130/Del/2014. We have already decided the issue and the

ground raised by the assessee has been dismissed. Following similar reasoning this ground by the assessee is dismissed.

31. In the result, both the appeals filed by the Revenue are partly allowed for statistical purposes and Cross Objection filed by the assessee are dismissed.

Order pronounced in the open Court on this 23rd July, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

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

Dated: 23-07-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi