

Date of Hearing : 27.06.2018

Date of Pronouncement : 14.09.2018

ORDER

Per S.S. Godara, JM

1.The Revenue and assessee filed their instant three cross appeals each for assessment years 2006-07, 2008-09 and 2009-10 against the CIT(A)-XII, Kolkata, separate orders dated 11.03.2013, 14.03.2013, 16.01.2014 in case nos. 924/XII/12/09-10, 390/XII/12/11-12, 38/XII/Cir-12/13-14, (assessment year wise); respectively involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

We proceed assessment year wise for the sake of convenience and brevity.

Assessment year 2006-07

Revenue's appeal I.T.A. No. 2113/Kol/2013 and assessee's cross appeal I.T.A. No. 2150/Kol/2013

We come to Revenue's appeal. Its sole grievance reads that the CIT(A) has erred in law and as facts in allowing arrears Section 80IB and 80IC deduction claims totaling to Rs. 1,39,48,12,000/- thereby reversing Assessing Officer's action not taking any cognizance thereof solely for the reason that the taxpayer had not submitted its form 10CCB auditor's report in respect of the corresponding revised claim.

2. It emerges at the outset that the CIT(A) order under challenge has merely directed the Assessing Officer to consider the impugned deduction claim in light of his findings on the very issue in preceding assessment year 2005-06. Both the learned representatives are very fair in taking as to this tribunal co-ordinate bench order dated 06.01.2017 upholding identical lower appellate finding in the very issue in Revenue's

appeal in I.T.A. No. 33/Kol/2010. Honourable apex court's decision in CIT vs. G. M Knitting Industries Pvt. Ltd. and Another [2015] 125 DTR 38 (SC) has already settled the law that an assessee is entitled for Section 80IB deduction even if it files its form 10CCB audit report not with the return but before completion of assessment. This is not the Revenue's case that the assessee's audit report has escaped the Assessing Officer consideration during assessment. There is no distinction on facts or law involvement in the two assessment years. We thus decline the Revenue's instant substantive ground as well as main appeal in I.T.A. No. 2113/Kol/2013.

3. Assessee's cross appeal in I.T.A. No. 2150/Kol/2013

The assessee's first substantive ground challenges correctness of both the lower authorities action declining section 80IB/ 80IC deduction claimed of Rs. 4,77,40,000/- in relations to interest income for the reason that the same has not been derived from the eligible business as per Honourable apex court's decision in CIT vs. Sterling Products 237 ITR 579 (SC). They hold that the crucial expression 'derived from' used in the impugned deduction provision means the relevant income to be having a direct nexus with the business activity or profits and gains derived there from. Learned senior counsel fairly concedes that the honourable jurisdictional High Court decision in assessee's own case reported as 231 Taxman 585 (Cal) has already upheld Revenue's very stand. We confirm the impugned Section 80IB/80IC deduction disallowance of Rs. 4,77,40,000/- on this court alone.

4. The assessee's next grievance is that the learned CIT(A) has erred in law and on facts in affirming the Assessing Officer action disallowing provision of marketing services amounting Rs. 10,52,08,968/-. Both parties are unanimous during the course of hearing that the Assessing Officer as well as the CIT(A) have gone by their respective findings in the immediate preceding/subsequent assessment years while making the impugned disallowance. For the reason that it is in the nature of a contingent liability only than an

ascertained one, we notice that the taxpayer's corresponding substantive ground already stands accepting in assessment years 2003-04 to 2004-05 in I.T.A. Nos. 1671/Kol/2008 and 1024/Kol/20109 decided on 25.05.2016 with the following detailed discussion:

"10. The issue raised in Ground No. 2 relates to the disallowance of Rs. 1,69,27,615/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of provision made for marketing expenses.

11. As noticed by the Assessing Officer during the course of assessment proceedings, the assessee had made a provision of Rs.19.90 crores for marketing expenses. He, therefore, required the assessee to furnish the complete details showing the nature and basis of provision made for marketing expenses. In reply, the following submission was made by the assessee in writing:-

"During the previous year relevant to the AY 2003-04, RBIL has made a provision of Rs.199,003,162/- in respect of marketing expenses. The said provision was required to be made by RBIL since it is following the mercantile system of accounting, provisions required to be made in respect of all expenses incurred during the accounting period irrespective at the time payment. Since RBIL is following mercantile system of accounting which is a permissible method of accounting as per section 145 of the Act and the accounts are audited and provision made as per the prescribed accounting policies should not be disallowed unless specifically provided in the provision of the Act. Further, out of the provision of Rs.199,033,162/-, a substantial amount has been paid subsequently and balance is likely to be paid in due course. Hence, no disallowance is warranted on this account. Without prejudice to the aforesaid submission, please note that in case of write back of the aforesaid provision, if it is found to be in excess or for any other reasons, the same will liable to tax in view of the provisions of section 41 of the Act. Hence, there will be no loss to the revenue on that account also. In view of the aforesaid we submit that no disallowance is warranted in respect of the impugned provision of Rs.199,003,162/-."

12. The above explanation offered by the assessee was not found acceptable by the Assessing Officer. According to him, the assessee following mercantile system of accounting, was entitled to create provision only against ascertained liabilities. In this regard, he found from the relevant details filed by the assessee that out of the provision of Rs.19.90 crores made by the assessee, the actual amount spent was only Rs.18.20 crores and the balance amount of Rs.1.69 crores was found to be excess. He held that this excess provision was liable to be disallowed not being pertinent to the year under consideration and accordingly the disallowance of Rs.1,69,27,615/- was made by him on account of provision for marketing expenses.

13. The disallowance made by the Assessing Officer out of the provision for marketing expenses was disputed by the assessee in the appeal filed before the ld. CIT(Appeals). Besides reiterating the submissions made before the Assessing Officer, it was also brought to the notice of the ld. CIT(Appeals) by the assessee that the excess provision of Rs.1.69 crores having been offered to tax in the subsequent years under section 41(1) at the same rate, there was no loss to the Revenue. The ld. CIT(Appeals), however, did not find merit in the stand of assessee and rejecting the same, he proceeded to confirm the disallowance made by the Assessing Officer on account of excess provision made for marketing expenses.

14. The ld. counsel for the assessee explained the nature of provision made for marketing expenses and submitted that such provision is required to be made in the relevant year on estimated basis. He submitted that due to the changes that take place, the actual expenditure finally incurred on marketing gets changed and depending on the quantum of expenditure actually incurred, the excess provision is written back in the subsequent years and offered to tax. He contended that since the assessee is following mercantile system of accounting, the provision for marketing expenses is required to be made for the relevant year on estimated basis and since such provision, if found to be excess, is being offered to tax in the subsequent years at virtually the same rate, the disallowance made in the year under consideration on account of such excess provision is not justified.

15. The ld. D.R., on the other hand, submitted that the provision made by the assessee for marketing expenses on estimated basis is always found to be on the higher side. He submitted that it is not clear as to why there should be difference between provision made and actual amount of expenses incurred. He contended that in the absence of any sound basis given by the assessee for making the estimate, the excess provision is liable to be disallowed as rightly held by the authorities below.

16. We have heard the arguments of both the sides and also perused the relevant material available on record. The question that arises for our consideration in the present context is whether the assessee following mercantile system of accounting is right in recognizing and making the provision for marketing expenses in the facts and circumstances of the case. In this regard, a useful reference may be made to the decision of Hon'ble Supreme Court in the case of Rotork Controls Indi (Pvt.) Limited – vs.- CIT reported in 314 ITR 62 cited by the ld. counsel for the assessee, wherein it was held by the Hon'ble Apex Court that “a provision can be recognized when (a) an enterprise has a present obligation as a result of a past event, (b) it is probable that an outflow of resources will be required to settle the obligation, (c) a reliable estimate can be made of the amount of the obligation”. In the present case, the provision made by the assessee-company for marketing expenses amounting to Rs.19.90 crores is allowed by the Assessing Officer to the extent of Rs.18.20 crores thereby accepting that the assessee-company had a present obligation on account of such marketing expenses and there was requirement to make provision to settle the same. His only objection is that the provision so made was excess going by the amount actually required by the assessee

subsequently to settle the obligation and accordingly a disallowance to the extent of such excess provision amounting to Rs.1.69 crores was made by him. The Assessing Officer thus finally objected to the quantum of provision made by the assessee for marketing expenses on the ground that the estimate made by the assessee of the amount of obligation is not reliable.

17. At the time of hearing before us, the ld. D.R. has also reiterated this stand by submitting that the provision made by the assessee for marketing expenses is found to be always on the higher side, which clearly shows that the estimate made by the assessee of this liability is not reliable. We find it difficult to accept this stand of the Revenue. It is pertinent to note here that out of the total provision of Rs.19.90 crores made by the assessee for marketing expenses, a sum of Rs.18.20 crores was required to settle the obligation and only the balance amount of Rs.1.69 crores, which is less than 10% of the total provision made by the assessee remained excess. Moreover, such excess provision was subsequently reversed by the assessee and offered to tax at the same rate as submitted by the ld. counsel for the assessee resulting into no loss with the Revenue. Having regard to all these facts of the case, it cannot be said that the estimate made by the assessee of the provisions for marketing expenses was not reliable. In our opinion, the provision for marketing expenses was rightly recognized and made by the assessee being its liability for the expenses of its business and the disallowance made by the Assessing Officer and confirmed by the ld. CIT(Appeals) merely on the basis that such provision is found to be finally excessive is not sustainable. We, accordingly, delete the disallowance made on this issue and allow Ground No. 2 of the assessee's appeal."

5. Learned CIT DR vehemently contends at this stage that the assessee has failed to prove the three basic ingredients of its impugned provisions i.e. an obligation arising as a result of past events, outflow of resources required for the very obligation followed by a reliable estimation; respectively. The assessee inter alia takes us to pages 138 (assessment year wise details of the marketing services from assessment year 2004-05 onwards); page 140 (notes pertaining to its media activity, creation of marketing provision and reversal thereof), page 175 (sample estimation), pages 176 to 204 (TV estimate) and schedule as well as other similar details up to page 235 vis-à-vis its advertisements/marketing expenses for the impugned assessment order amounting to Rs. 156.94 crores. Suffice to say, both the lower authorities have been very fair in not pinpointing any distinction on facts and law in the instant case in all these assessment years. We adopt the above extracted reasoning *mutatis mutandis* qua the impugned

assessment order to delete the disallowance of marketing services' provision. Ordered accordingly.

6. The assessee's next substantive ground seeks to deletion section 14A disallowance of Rs. 23,660/- made in both the lower proceedings. The same pertains to exempt income from tax free bonds of Rs. 23,65,767/-. The CIT(A) has followed the findings on the very issue in earlier assessment years to estimate the impugned disallowance @ 1% of exempt income; coming to Rs. 23,660/- Mr. Khaitan states very fairly that this Tribunal has already affirmed the said estimated disallowance @1%. We thus reject the assessee's instant substantive ground. **Its appeal I.T.A. No. 2150/Kol/2013 is partly accepted in above terms.**

Assessment year 2008-09

Revenue's appeal in I.T.A. No. 2114/Kol/2013 and assessee's cross appeal in I.T.A. No. 2151/Kol/2013

The Revenue as well as assessee raise two substantive grounds in the instant cross appeals. The tax payer two folded grievance in its cross appeal no. 2151/Kol/2013 is that the CIT(A) has erred in law and on facts in disallowing interest income of Rs. 23,46,61,000/- in computing section 80IB/80IC deduction as well as in invoking section 14A read with Rule 8D disallowance of Rs. 50,000/- pertaining to its exempt income. Learned Senior Counsel is very fair in pointing out that our discussion on the twin identical issues in assessment year 2006-07 have already upheld the CIT(A) findings in preceding years. **We thus reject this tax payer's appeal I.T.A. No. 2151/Kol/2013.**

7. Coming to Revenue's appeal, we find that its former substantive ground challenges the CIT(A)'s order reversing Assessing Officer action allocating residual cost between eligible and non-eligible elements in ratio of sales to the tune of Rs. 14,64,64,507/- u/s 80IB/80IC as well as in treating scrap sales of Rs. 1,11,74,500/- to be eligible for the

said deduction relief, respectively. Learned CIT DR takes us to assessment order dated 28.12.2011 as the former issue allocation of residual cost containing the following detailed discussion:

“2.1. The assessee is having units (Factories), income from which are eligible for deduction under Chapter VIA of the Income Tax Act. It also has units (Factories), income from which are not eligible for deduction under chapter VIA of the Income Tax Act. Assessee has used the terminology ‘fiscal units’ for units (Factories), income from which are eligible for deduction under chapter VIA of the Income Tax Act. It has used the terminology ‘non-fiscal units’ for units (Factories), income from which are not eligible for deduction under chapter VIA of the Income Tax Act. The profits derived from these fiscal units have to be computed which will be eligible for deduction from the total income of the assessee. The question is how is the profit and gains from these units to be computed.

Section 80IB (13) states that the provision of section 80IA(5) and 80IA(7) to 80IA(12) will apply to the eligible business.

Section 80IC(7) states that the provision of section 80IA(5) and 80IA(7) to 80IA(12) will apply to the eligible business.

Section 80IA(5) states that the profit & gains from these units to be computed as if such eligible business were the only source of income of the assessee. This means that income from these units shall be credited and all the cost necessary to run the unit shall be debited. These expenses will include cost directly attributable to these units as well as cost which are indirectly attributable to these units. Even administrative expense like director fees etc will have to be considered because if these units were the only source of income even director fees would have been debited.

Assessee has already prepared a separate profit & Loss account for each fiscal unit and claimed the profits from these fiscal units as eligible for deduction under chapter VI-A. Now it remains to be seen whether the profits & gains have been correctly computed as if these units are the only source of income. These are submitted in Form 10CCB.

To determine the profit & gains from these units assessee has considered both direct cost and indirect cost which in principle is correct. Now it remains to be seen whether the quantum of indirect cost attributed to these fiscal units are as if these units are the only source of income.

The assessee has debited certain costs in its Profit & Loss account the total of which is Rs. 379,933,652.301- (as per accounts) and the break up is as below:

ITA Nos.2113,2114,2150&2151/Kol/2013
 ITA Nos.760&762/Kol/2014
 M/s Reckitt Benckiser (India) Ltd.
 A.Yrs. 2006-07, 2008-09 & 2009-10

<i>Other costs</i>	<i>As per accounts</i>
	(Rs.)
<i>Finance</i>	57,077,480.4
<i>HR</i>	42,532,226.9
<i>Others</i>	280,323,945.0
<i>Total</i>	379,933,652.3

The assessee has apportioned a part of these cost to eligible fiscal units. The methodology of assessee is as below:

The assessee has apportioned the cost of Rs. 379,933,652.3/- in three heads. One is Fiscal units, other is non-fiscal units and the third is Head office. It considered the employee directly involved in management of fiscal and non fiscal units which are posted in head office. These are 32 in number. Then it considered the total number of employees posted in head office. These are 115 in number.

*Thus it apportioned the expense of Rs. 379,933,652.30/- to head office as below:
 [(115-32)/115]x379,933,652.30/- which is Rs. 274,212,983.80/-*

*Further it apportioned to the expense to fiscal and non-fiscal units as below:
 [(32/115)x379,933,652.30/- which is Rs. 105,720,668.50/-*

*It then divided the amount of Rs. 105,720,668.50/- amongst the various fiscal units on the basis of the sales of the units as below:
 Total sales of the assessee company is Rs. 13,836,239,000/-. These includes sales from fiscal and non-fiscal units both.*

Units	Sales of the units (Rs.)	Cost apportioned on turn over ratio (Rs., in lacs)		Cost apportioned on turn over ratio		
				Finance	HR	Others
Baddi	811,461,657.2	=(811,461,657.2/13,836,239,000)X105,720,668.5	=6,200,259.2	931465.7	690497.1	4574695.5
Parwano liquid	1,546,813,876.7	=(1,546,813,876.7/13,836,239,000)X105,720,668.5	=11,818,977.5	1775566.5	1323092.7	8720313.3
Parwano soaps	1,836,064,336.4	=(1,836,064,336.4/13,836,239,000)X105,720,668.5	=14,029,097.7	2107593.1	1570507.8	10350996.8
Jammu powder	461,151,821.3	=(461,151,821.3/13,836,239,000)X105,720,668.5	=3,523,593.3	529349.9	394453.8	2599785.6
Jammu pests	574,795,609.1	=(574,795,609.1/13,836,239,000)X105,720,668.5	=4,391,928.8	695800.0	491660.9	3240467.9
Uttaranchal	2,723,861,869.3	=(2,723,861,869.3/13,836,239,000)X105,720,668.5	=20,812,628.2	3126683.7	2329900.0	15356044.4
	7,954,149,170.0		60,776,484.7			

ITA Nos.2113,2114,2150&2151/Kol/2013
 ITA Nos.760&762/Kol/2014
 M/s Reckitt Benckiser (India) Ltd.
 A.Yrs. 2006-07, 2008-09 & 2009-10

Thus, the same expenses for unit not claiming deduction under chapter VIA is Rs. 105,720,668.50/- - Rs. 60,776,484.70/- which is Rs. 449.11 lacs. It means that the expenses which was apportioned to Head Office of an amount of Rs. 274,212,983.80/- has not been apportioned to neither fiscal units nor non-fiscal units. However, the same has been debited to consolidated profit and loss account of the assessee company. The tax is determined from Profit shown in consolidated P/L a/c less deduction claimed which is profit of fiscal units. It means that any expense which has not been allocated to either fiscal units or non-fiscal units reduces the consolidated P/L profit. It means that in essence this reduces the profit of non-fiscal units. This means that the head office expense are apportioned to non-fiscal units. This is incorrect.

The correct apportionment would be to divide the entire expense amongst fiscal and non-fiscal units. The head office does not exist in isolation. The expenses allocated to Head office has to be absorbed by both fiscal units as well as non-fiscal units. Cost Accounting Standard 3 (CAS-3) issued by the Council of the Institute of Cost and Works Accountants of India on 'Overheads'. The standard deals with the method of collection, allocation, apportionment and absorption of overheads. It states that cost should be apportioned to various cost centre and then absorbed in the products. The process adopted by the assessee divide the cost to various cost centre like head office, fiscal units and non-fiscal units but the expenses apportioned to head office is not absorbed by the fiscal units and is only absorbed by non-fiscal units. The head office expense of Rs. 274,212,983.80/- has to be further absorbed amongst fiscal units as below:

Units	Sales of the units (Rs.)	Cost apportioned on turn over ratio (Rs., in lacs)	
Baddi	811,461,657.2	$= (811,461,657.2 / 13,836,239,000) \times 274,212,983.83$	=16081922.43
Parwanoo liquid	1,546,813,876.7	$= (1,546,813,876.7 / 13,836,239,000) \times 274,212,983.83$	=30655472.82
Parwanoo soaps	1,836,064,336.4	$= (1,836,064,336.4 / 13,836,239,000) \times 274,212,983.83$	=36387972.21
Jammu powder	461,151,821.3	$= (461,151,821.3 / 13,836,239,000) \times 274,212,983.83$	=9139320.08
Jammu pests	574,795,609.1	$= (574,795,609.1 / 13,836,239,000) \times 274,212,983.83$	=11391565.23
Uttaranchal	2,723,861,869.3	$= (2,723,861,869.3 / 13,836,239,000) \times 274,212,983.83$	=53982754.33
	7,954,149,170.0		157,639,007.09

Thus the same expenses for unit not claiming deduction under chapter VI-A will be Rs. 274,212,983.80/- - Rs. 157,639,007.09/- which is Rs.116573977/-.

Thus the expense of an amount Rs. 157,639,007.09/- was not absorbed to cost of fiscal unit and thus the profits of these fiscal units were inflated by an amount Rs. 157,639,007.09/-. The deduction thus claimed was excess by an amount Rs. 157,639,007.09/- which should be taxed.

2.2 Assessee was asked as to why the said income be not considered as ineligible for deduction u/s 80IB/80IC vide order sheet noting dated 31-10-2011. Assessee submitted a reply on 14-11-2011 stating that:

"In this regard, we submit that the company has claimed deduction of Rs 25,461.88 lacs under sections 80-IB and 80IC of the Act in respect of Parwanoo {Soap}, Parwanoo {Liquid}, Jammu {Powder}, Jammu {Pest}, Baddi and Uttaranchal units respectively.

In this regard, further to our earlier submission dated 02 September 2011 and 20 September 2011, we submit that all the costs have been properly and prudently allocated to the units eligible for fiscal incentive. Further, it was submitted and explained to your goodself that RBIL has allocated the other expenses of Rs 3,7991akhs {approx} incurred on account of {i} HR-Residual cost {ii} Financial Residual cost and {iii} Residual cost centre - Office/ Legal/ IA among the eligible and non-eligible fiscal units in the ratio of the number of executive at the corporate office who are directly involved in the management of the factory operations like procurement, production, quality, logistics etc. to the number of employees to the corporate office and the ratio of sales of eligible fiscal units to total sales.

Against the said allocation, your goodself has asked us to show cause as to why the other expenses of Rs 3,991akhs (approx) should not be allocated among eligible and non-eligible units in connection with the deduction claimed under sections 80IB and 80IC of the Act, in the turnover ratio.

In this regard, we submit that the residual costs pertain to those cost which could not be allocated or identified with single function or unit due to the general utility to all the functions and units of the company. The basis of collection of this cost is the number of executive. These costs include the residuary costs of all the support functions which have not been allocated to the Cost of Goods Sold 'COGS').

The residual cost broadly consists of all the support functions like finance/ HR/ IS apart from office administration, legal, internal audit, etc. as follows:

Salary & Wages including all benefits to employees

Traveling Expenses

Training Expenses

Legal and Consultancy

Security Services

Office Electricity and water

Rent

ITA Nos.2113,2114,2150&2151/Kol/2013
ITA Nos.760&762/Kol/2014
M/s Reckitt Benckiser (India) Ltd.
A.Yrs. 2006-07, 2008-09 & 2009-10

Printing and Stationery
Postage and Courier
Telephone and Mobile
Insurance
Depreciation

The expenses under the various heads mentioned above are incurred at Corporate Office on account of the following functions:

Office Administration
Finance
Managing Director Office
HR
Information System
Legal
R&D
Internal Audit
Market Research

For FY 2007-08, the total number of executive at the corporate office were 115 out of which 32 employees were working in supply function which are directly linked to the factory operations. This worked out to 27.83%. The ratio of sales of eligible fiscal units to overall sales worked out to 57.49%. The effective percentage of residual cost thus worked out to 16% (27.83 X 57.49%), which the company has applied for allocating the residual cost to the eligible fiscal units.

In view of the same, it is submitted that the company has allocated the residual cost on a reasonable and appropriate basis and therefore the same should be accepted. Further, the combined ratio of executives directly related to the factory operations and turnover ratio as adopted by the company instead of only the turnover ratio provides a more reasonable method of allocating the expenses related to the eligible fiscal units for determining the quantum of profits eligible for deduction under sections 80-IB and 80-IC of the Act. Further, it is submitted that it will not be reasonable to allocate the head office general /common expenses in proportion to their turnover to the units because the common expenses incurred at head office attributable to a particular unit cannot be said to be a direct variable of the turnover of that unit and the combined basis of allocating them on the basis of number of employees working for all the factory units in head office and sales of the respective units is more reasonable.

In this regard, we submit that there has been no change in the facts and circumstances of the case as compared to the earlier years which could lead to disallowance of the allocation of other expenses. In this connection, we would also like to place reliance on the following judicial pronouncements wherein it has been held that where the claim of deduction has been accepted in the earlier years, the AO was not justified in taking a different view:

CIT vs. Lagan Kala Upvan (2003) 259 ITR 489 (Del)

The High Court of Delhi stated that, "We also find substance in the contention of learned counsel for the assessee that in the absence of any change in the objects and activities of the assessee, the AO was not justified in taking a different view only in respect of the present assessment year when from asst. yr. 1970-71, exemption under the provision of section 10(22) was being allowed to the assessee consistently."

CIT vs. Neo Poly Pack (P) Ltd (2000) 245 ITR 492 (Del)

It was held that "It is true that each assessment year being independent of the other, the doctrine of resjudicata does not strictly apply to income-tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years in a particular manner, for the sake of consistency, the same view should continue to prevail in subsequent years, unless there is some material change in the facts".

In the case of the company, please note that the basis of allocation of expenses to fiscal units as filed in the return of income for earlier AYs 2005-06, 2006-07 & 2007-08 were accepted by the Assessing Officer ('AO'). However, with regard to the basis of allocation of residual costs, the AO in AY 2005-06 has not accepted the same. But the Commissioner of Income Tax (Appeals) ['CIT (Appeals)'] in AY 2005-06 has examined and accepted the claim made by RBIL under sections 80-IB & 80-IC of the Act and the aforesaid basis adopted by RBIL in respect of allocation of residual expenses to the eligible fiscal units and deleted the disallowance made in the assessment proceedings by passing a speaking order in this regard. Further, please note that the CIT (Appeals) in AY 2005-06 has upheld the aforesaid basis of allocation of residual cost adopted by the company on the following contention:

- *Residual cost pertains to those cost which could not be allocated or identified with single function or unit due to the general utility to all functions and units of the company. The basis of allocation is the number of executive.*
- *These costs include the residuary costs of all the support functions which have been allocated to the cost of goods sold.*

For allocation purposes of residual cost, the company has taken into consideration number of person as well as sales of the eligible fiscal units which is more logical.

Without prejudice to above, we wish to submit that in AY 2005-06, the AO has raised dispute by stating that the ratio of workers of eligible undertakings to the total number of workers across all the manufacturing locations from where the company has sourced its requirements should be used instead of the aforesaid basis of allocation of expenses adopted by the company in computing the profits eligible for deduction under sections 80-IB and 80-IC of the Act. However, the said basis adopted by the AO was disregarded by the CIT(Appeals) and the basis of allocation adopted by the company was upheld. Considering the same, we wish to submit that the department cannot in an arbitrary manner proceed to adopt any other basis of allocation when the facts and circumstances of the matter in the case of the company remain unaltered. Moreover, the basis adopted by the company in earlier years has been accepted by the revenue authorities and as a matter of consistency, your goodself should adopt the same basis as was adopted in earlier years. We wish to further reiterate that there has been no change in the facts from the earlier years as compared to the subject assessment year. Hence, we submit that the view followed in the earlier years ought to be followed. In support of the same, we wish to place reliance on the Supreme Court decision in the following case wherein it has been held that the same view is to be adopted in the assessments, in absence of any new material facts:

Radhasoami Satsang – 193 ITR 321 (SC)

“Each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspects permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

In view of the above, it is submitted that the company have allocated the residual cost on a reasonable and appropriate basis in computing the profits eligible for deduction under sections 80-IB and 80-IC of the Act and therefore the same should be accepted.”

2.3. The contention of assessee is not accepted because of following reasons:

- (i) Just because some allocation has been followed over a period of years it cannot be held that the same ought to be continued even if the basis of allocation of wrong. The reworking of allocation should be done if it is found that the method of allocation followed is erroneous.*
- (ii) The findings of AO in A.Y. 2005-06 is different from the finding in the current assessment year hence the order of CIT(A) is not applicable as the facts are different.*
- (iii) It is not disputed that the allocation may be done on basis of number of employees. The total indirect cost in question has been allocated by the assessee into three cost centres. They are fiscal units, non-fiscal units and head office. The cost allocated to fiscal units are absorbed by the fiscal unit and the profit & loss computed of the fiscal*

unit considers the cost allocated to the fiscal unit. The cost allocated to non-fiscal units are absorbed by the non-fiscal unit and the profit & loss computed of the non-fiscal unit consider the cost allocated to the non-fiscal unit. However the cost allocated to head office is not absorbed by the fiscal units. It is absorbed by the non-fiscal unit. Thus, the expense allocated to head office is considered in the profit and loss computed of the non-fiscal unit. There are two profit centre. One is fiscal units and the other is non-fiscal units. The head office is not an independent profit centre. Any cost allocated to head office has to be again absorbed by the profit centres which are fiscal units and non-fiscal units, when the cost allocated to head office is not absorbed between fiscal units and non-fiscal units it means that the same is considered in non-fiscal unit which is incorrect.

Thus the expense of an amount of Rs. 157,639,007.09/- was not absorbed to cost of fiscal unit and thus the profits of these fiscal units were inflated by an amount Rs. 157,639,007.09/-. The deduction thus claimed was excess by an amount of Rs. 157,639,007.09/- which should be taxed."

Revenue's vehement contention during the course of hearing is that the CIT(A) had deleted the impugned allocation simply by following his order in assessment year 2005-06 dated 09.06.2009. Its case is that there is no evidence whatsoever about the assessee's remaining 83 out of 115 employees to have been engaged in trading and other allied business activities. We find no merit in Revenue's instant grievance. There is no dispute even as per assessment order about the assessee having allocated 32 out of its 115 employees / executives to manufacturing segment. The assessee has been running both eligible as well as non-eligible units. Its allocation formula was number of 32 employees divided by total number of employees multiplied by eligible units sales further divided by total sales; to allocate the impugned expenditure. The same very formula had been applied in assessment year 2005-06 as well wherein the co-ordinate bench (supra) accepted the same in its order. We make it very clear that the Assessing Officer has himself accepted the assessee to have been engaged in trading of other segments. We therefore conclude in these facts and circumstances that the CIT(A) has rightly followed his findings of assessment year 2005-06 as applicable *mutatis mutandis* in the impugned assessment year as well. **The Revenue fails in its former substantive ground.**

8. Coming to Revenue's later grievance of scrap sales, both parties are *ad idem* that the CIT(A) has followed preceding assessment order findings in treating the same to be entitled for section 80IB deduction as upheld in its own case by hon'ble jurisdictional high court (supra). The Revenue is very fair in not pointing out any distinction as facts as law. **These cross appeals in I.T.A. No. 2114/Kol/2013 and 2151/Kol/2013 fail accordingly.**

Assessment year 2009-10

assessee's and Revenue's cross appeals in I.T.A. No 760 & 762/Kol/2014

The assessee's first substantive ground seeks to reverse both the lower authorities' action disallowing its section 80IB/80IC deduction claim to the tune of Rs. 16,02,07,000/- pertaining to interest income. Mr. Khaitan concedes very fairly that the assessee's very claim has already been declined by hon'ble jurisdictional high court (supra). We uphold the impugned disallowance of interest income for the purpose of allowability of section 80IB/80IC deduction. It transpires from the case file that the assessee has also raised an additional ground at this stage regarding quantification of the impugned disallowance. It is pleaded that the above interest income of Rs. 1,60,27,000/- is inclusive of Rs. 3,39,26,000/- relating to its parwanu unit in respect of which it had claimed section 80IC deduction. It is clarified that the said deduction was allowable to the extent of 30% only being 6th year of claim. It thus submits that only 33% of Rs. 3,39,26,000/- i.e. Rs. 1,01,77,800/- formed part of Section 80IC deduction in respect of Parwanu unit whereas the entire interest of Rs. 3,39,26,000/- stands disallowed/added in both the lower proceedings. It pleads double addition of interest income amounting to Rs. 2,37,48,200/- therefore. Learned CIT DR on the other hand vehemently contends that there is no dispute on the non-allowability of interest income for the purpose of section 80IB/80IC deduction. It then avers that the assessee has raised an additional ground regarding quantification on the impugned disallowance which requires verification of facts. We find force in Revenue's contention therefore and

restore the instant additional issue raised at assessee's behest dated 24.06.2018 to the Assessing Officer for necessary factual verification of facts. **This additional ground is taken as accepted for statistical purposes.**

9. Mr. Khaitan does not press for assessee's next substantive ground challenging section 14A read with Rule 8D disallowance of Rs. 25,500/- keeping in mind smallness of the amount. **The same is therefore rejected.**

10. The assessee's third substantive ground pleads that the CIT(A) has erred in law as well as on facts in not considering its written submission dated 16.01.2014 seeking to allow expenditure claim to Rs. 1,24,97,943/- disallowed u/s 40a(ia) involving sums of Rs. 3,60,029/-, Rs. 16,54,560/- and Rs. 1,04,83,354/-pertaining to financial years 2003-04 and 2004-05 whose TDS was deducted and deposited to the government treasury during the relevant previous year. However the written submission filed before the CIT(A) dated 16.01.2014 are at pages 180 to 190 of the paper book. We find no merit in the instant pleadings. The assessee's case at best is that it had filed the impugned relevant facts in its written submission dated 16.01.2014 before the CIT(A) for the first time. The lower appellate order on the other hand makes it evident that the last hearing before the CIT(A) took place on 13.01.2014 finally culminating in the order under challenge dated 16.01.2014. The assessee's written submission of the same date where prove that they had been actually received before passing of the final order in the lower appellate proceedings. We do not see any valid reason in assessee's instant third and last substantive ground, on this ground alone. **Its appeal I.T.A. No. 760/Kol/2014 is partly allowed for statistical purposes.**

11. Revenue's cross appeal I.T.A. No. 762/Kol/2014.

Its twin substantive grounds challenge the CIT(A) order reversing the disallowance/addition of Rs.. 25,87,06,000/- pertaining to allocation of residual costs

ITA Nos.2113,2114,2150&2151/Kol/2013
 ITA Nos.760&762/Kol/2014
 M/s Reckitt Benckiser (India) Ltd.
 A.Yrs. 2006-07, 2008-09 & 2009-10

between eligible and non-eligible units as well as scrap sales of Rs. 1,61,55,000/-, for the purpose of section 80IB/80IC deduction claim computation. Suffice to say, we have already upheld the CIT(A) similar action on the very two issues in preceding assessment year 2008-09 in foregoing paragraphs. We adopt judicial consistency therefore to affirm the CIT(A)'s findings under challenge. **The Revenue's instant cross appeal in I.T.A. No. 762/Kol/2014 is declined accordingly.**

15. The Revenue's all three appeals are dismissed and the Assessee's appeal in I.T.A. No. 2150 /Kol/2013 is partly allowed, I.T.A. No. 2151/Kol/2013 is dismissed and I.T.A. No. 760/Kol/2014 is partly allowed for statistical purposes.

Order pronounced in the Court on 14.09.2018

Sd/-

[M. Balaganesh]
 Accountant Member

Sd/-

[S.S.Godara]
 Judicial Member

Dated : 14.09.2018
 SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-12, Kolkata, P-7, Chowringhee Square, Aayakar Bhawan, 7th Floor, Kolkata-69.
2. M/s Reckitt Benckiser (India) Ltd., Diamond Prestige, 3rd Floor, Suit No. 315, 41A, AJC Bose Road, Kolkata-700017.
- 3..C.I.T(A).-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
 Head of Office/D.D.O., ITAT, Kolkata Benches