IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD ĩDòBENCH

Before: Shri S. S. Godara, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 1046/Ahd/2014
Assessment Year 2010-11

The ACIT, Circle-4, Baroda (Appellant)	Vs	M/s. 20 Microns Ltd. 307/308, Arundeep Complex, Race Course (South), Baroda-390007 PAN: AAACZ0580B (Respondent)

ITA No. 1216/Ahd/2014
Assessment Year 2010-11

M/s. 20 Microns Ltd. 307/308, Arundeep Complex, Race Course (South), Baroda-390007 PAN: AAACZ0580B (Appellant)	Vs	The ACIT, Circle-4, Baroda (Respondent)

Revenue by: Shri V.K. Singh, Sr. D.R.
Assessee by: Shri S.N. Soparkar, A.R.

Date of hearing : 14-02-2018
Date of pronouncement : 11-04-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This cross appeal filed by Revenue and assessee for A.Y. 2010-11, arise from order of the CIT(A)-III, Baroda dated 22-01-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ñthe Actò

2. The revenue has raised following grounds of appeal:-

ITA No. 1046/Ahd/2014

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in reducing the disallowance u/s 14A on account of investment made in its own foreign subsidiary from the total investment without appreciating the fact that the method laid down under Rule 8D of the I.T. Rules, 1962 prescribes the average value of investments.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing depreciation @ 100% on the equipment purported to be dust collector though the assessee could not substantiate with iota of evidence that the equipment qualified to fall under 'Air Pollution Control Equipment' block.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing additional depreciation on electrical installation without appreciating the fact that additional depreciation is allowed only on new plant and machinery and the electric installation does not fall under the block of machinery included in manufacture or production."

3. The asssessee has filed return of income u/s. 139(i) of the act on 15th October, 2010 by declaring total income of Rs. 14,42,370/- and book profit u/s. 115JB at Rs. 10,57,12,460/-. Subsequently, the case was selected for scrutiny assessment by issuing of notice u/s. 143(2) of the act on 8th September, 2011. The assessee is engaged in the manufacturing of micronized minerals by dried and weight process. Further, the brief facts of the case are discussed under the different grounds of appeal of the revenue as under:-

Reducing the disallowance u/s. 14A

4. During the course of assessment proceedings, the assessing officer has noticed that assessee has received dividend income of Rs. 1.59 lacs which has been claimed as exempt u/s. 10(34) of the act. The assessing officer has applied section 14A r.w. Rule 8D of the IT Rule, 1962 and made addition of Rs. 29,46,790/-

5. Aggrieved assessee filed appeal before he ld. CIT(A). The ld. CIT(A) has allowed the part relief to the assessee by observing as under:-

> *"4.3 I have considered the facts of the case and the submission of the appellant. Since the dividend income from the Malaysian subsidiary is taxable in India, hence, the investment made in such a company is not to be considered as the investment made for the purposes of earning exempt income. Hence, while calculating disallowance as per Rule 8D, the investments of Rs. 50.38 lakhs as at 31.03.2010 and investment of Rs. 21.44 lakhs as at 31.03.2009 is directed to be reduced from investment for computing the investments income which does not form the part of the total income. The AO is directed to verify the computation filed by the appellant and make the disallowance accordingly. Accordingly, this ground of appeal is allowed."*

The Ld. Counsel has placed reliance on the decision of Joint Investments (P) Ltd. v. CIT of Delhi High Court (2015) 59 taxmann.com 295 (Delhi) regarding disallowance u/s 14A, to the extent of expenditure incurred by the assessee in relation to the tax exempt income. On the other hand the Ld. DR has supported the order of assessing officer.

6. We have heard both the sides on this issue and perused the material on record carefully. The Ld. Counsel has not demonstrated with supporting material regarding the applicability of the aforesaid decision to the facts of the case of the assessee. However, after considering that the dividend income from the Malaysian subsidiary is taxable in India we restrict the disallowance to the extent of exempt income by placing reliance on the decisions of Co-ordinate Bench of ITATĝs in the following cases:-

> *(i) M/s. Shree Laxmi Bidi Trading Co. Vs. DCIT [CO No.315&316/Ahd/2014 dt. 30/03/2015]*
> *(ii) Jivraj Tea Limited Vs. DCIT Circle - 1, Surat [ITA No. 866/Ahd/2012 dated 28/08/201 4 (Ahmedabad Tribunal)*

> *(iii) Madhusudan Industries Ltd. Vs. ITO [ITA No. 1715/Ahd/2011 dated 13/02/2015 (Ahmedabad Tribunal)*

Accordingly, the appeal of the revenue is dismissed and appeal of the assessee is partly allowed on this issue.

Allowing depreciation @ 100% on Air Control Pollution Equipment

7. On scrutiny, the assessing officer has claimed 100% depreciation of Rs. 35,53,913/- on pollution control machinery. The assessing officer has observed that equipment on which depreciation was claimed was particle size analyzer and not air pollution controlling equipment. He further stated that assessee has not produced any certificate from competent authorities to prove that the asset on which it has claimed 100% depreciation fall under controlling air pollution. Consequently, the assessing officer has restricted the claim of depreciation @ 15% and made addition of Rs. 30,78,615/-.

8. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has party allowed the appeal of the assessee by observing as under:-

> *"7.3. I have considered the facts of the case and the submission of the appellant. In the appellate order for the AY 2009-10, it has been held that the dust collector is a pollution control equipment. Accordingly, the AO is directed to allow 100% depreciation on dust collector. If such equipment has been installed after 30.09.2009, then, the depreciation will be granted to the extent of 50% only.*
> *Since, the opening WDV of such equipment consists of particle analyzer on which depreciation was held to be allowable @15% only in the appellate order for AY 2009-10, hence, the AO's action in this matter is upheld.*
> *So far as bag filters are concerned, the appellant has not established as to how such filter is in the nature of pollution control equipment. No description of the activity done with the help of bag filter has been provided. Under such circumstances, the same cannot be held to be pollution control equipment. Accordingly, the AO is directed to provide depreciation at normal rate for equipments other than dust collector by treating them as plant and machinery."*

9. We have heard the rival contentions and perused the material on record on this issue. After taking into consideration the decision of the coordinate bench in the case of the assessee itself vide ITA No.755/2013 for the assessment year 2009-10 on the identical issue we do not find any reason to interfere in the decision of the Ld. CIT(A). Accordingly, the appeal of the revenue is dismissed on this issue.

Additional depreciation on electrical installation

10. The assessing officer noticed that assess has claimed additional deprecation of Rs. 20,65,065/- on account of addition made in electrical installation. The assessing officer has not allowed the claim of the assessee by stating that electric installation is not a part of plant and machinery as it related to electrical installation like wire, cable, switches, board and other electrical equipment. Therefore, additional depreciation is not allowable.

11. Aggrieved assesse filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee by observing s under:-

> *"8.3. I have considered the appellant's submission and the AO's observations. The appellant had claimed before the AO that the electrical installations are in the nature of control penals, Auto feed controllers, frequency drives and so on. The AO held that that addition under electrical installation is in the nature of wire, cable switch board and other electrical equipments. The appellant had submitted details of expenditure incurred on electrical installations during the course of appellate proceedings. A perusal of the details shows that these are mostly in the nature of cable, switch socket, AC frequency drive and other electrical penals etc. The appellant has claimed that the issue is covered by the decision of ITAT Ahmedabad in the case of Madhu Industries Ltd 132 TTJ 0233 (ASD). In this decision, the Tribunal has decided as follows:-*
> *"2.2. I have considered the submissions of the Authorised Representative. The appellant was asked to give details of electrical installation and copies of invoices. On perusal of details filed, it is seen that the electrical installation consists of electrical wires, switches, plugs, cables, MCB box and electrical items which are definitely of the category of electrical installation. The depreciation schedule classifies electrical items along with furniture and fittings as eligible to depreciation @ 15 per cent and it has also been^ mentioned that electrical fittings include electrical wiring, switches, sockets, other fittings*

and fans etc. Therefore, the AO has rightly allowed depreciation @ 15 per cent and disallowed the excess depreciation. The ground is accordingly dismissed."
We find from the arguments of both the sides as well as the orders of the lower authorities that the nature of assets i.e electrical installation that consists of electrical wires, switches, plugs, cables, MCB box and electrical items, which cannot function independently, rather, this is a part of plant machinery and it cannot be classified under furniture and fittings. -Accordingly, we are of the view that assessee is eligible for depreciation render the block of plant and machinery @ 25 per cent. We allow the claim the assessee and this issue of the assessee's appeal is allowed."
Thus, the issue is covered in favours of the appellant by the above decision. Since the Tribunal has directed to consider the electrical installations as plant and machinery, hence, the appellant is entitled to get additional depreciation on such additions made. Accordingly, the AO is directed to allow the additional depreciation."

After considering the decision of the coordinate bench as cited above and the decision of the coordinate bench of the ITAT vide ITA 755/Ahd/2013 in the case of the assessee itself wherein the identical issue is decided in affirmative in favour of the assessee, the appeal of the revenue is dismissed on this issue.

12. The assessee has filed following grounds of appeal:-

ITA 1216/Ahd/2014

"1. Ld. CIT (A) erred in law and on facts in confirming action of AO invoking rule 8D r w s 14A of the Act for disallowing expenses incurred for earning dividend income of Rs. 1, 59, 245/- claimed exempt u/s 10 (34) of the Act. Ld. CIT (A) failed to correctly interpret legislative intent for disallowance of direct and indirect expenses incurred to earn exempt income does not lead to disallowance much more than tax free income. It be so held now.
2. Ld. CIT (A) erred in law and on facts in confirming disallowance of product development expenses of Rs. 50, 00, 0007- claimed as revenue expenditure. CIT (A) ought to have deleted disallowance made by AO in absence of any enduring benefit resulting to the appellant instead of simply following the appellate order for A Y 2009/10. It be so held now.

3. Ld. CIT (A) erred in law and on facts in rejecting the alternate claim made by the appellant to direct AO to grant depreciation on product development expenses of Rs. 50, 00, 000/- in case the same is held to be capital in nature. Ld. CIT (A) ought to have allowed alternate claim made by the appellant. It be so held now.

4. Ld. CIT (A) erred in law and on facts in confirming disallowance of term loan interest of Rs. 31, 18, 000/- made by AO attributing the same to the capital work in progress u/s 36(i)(iii) of the Act. Ld. CIT (A) ought to have accepted computation submitted by appellant following method prescribed under accounting standard to restrict amount disallowed. It be so held now.

> *5 Ld. CIT (A) erred in law and on facts in directing AO to verify and allow deduction of actual bad debts written off and to verify whether provisions of bad debts were added back in the year in which provisions were created while computing book profits u/s 115JB of the Act. Ld. CIT (A) ought to have granted deduction claimed evident from records rather than sending it to AO for verification. It be so held now.*
>
> *6 Levy of interest u/s 234D is not justified.*
>
> *7 Initiation of penalty u/s 271 (1)(c) of the Act is not justified."*

Disallowance of expense u/s. 14A to the amount of Rs. 159245/-

13. This ground of appeal is adjudicated under the ground of appeal of revenue as supra in this order.

Ground nos. 2 & 3 disallowance of product development expenses and alternative claim of depreciation.

14. During the course of assessment proceedings, the assessing officer has claimed Rs. 50 lacs as revenue expenditure in the nature of product development expenses. During the course of assessment proceedings, the assessee has explained that these expenses are incurred on the knowhow for developing of product for commercial purposes which is utilized by the assessee for manufacturing a particular product. The assessing officer has not accepted the explanation of the assessee by stating that initially the assessee has shown these expenses being capital in nature in its regular books of accounts, subsequently, it has deducted the aforesaid expenses from its income in the computation of income. He further stated that similar disallowance was made in assessment year 2009-10, therefore, he has disallowed the claim of the said expenses of know-how for product by treating he same as capital expenditure.

15. Aggrieved assessee filed appeal before he ld. CIT(A). The ld. CIT(A) has sustained the addition made by the assessing officer by observing as under:-

> *"5.3 I have considered the facts of the case and the submission of the appellant. The AO has mentioned in his order that similar disallowance had been made in the case of the assessee in the assessment order for the AY 2009-10. In the current year also, from the submissions made by the appellant during the course of appellate proceedings, it is seen that the appellant has relied upon the copy of Product Development Agreement dated 12.12.2007, Product Development Report dated 20.03.2009 and the detailed booklet which gives a complete formality carried out for the development of the product. These documents were also submitted during the course of appellate proceedings for AY 2009-10 in Appeal No. CAB/III-125/11-12. In the appellate order dated 12.12.2012, after analyzing these documents and relying upon the decision of the Courts, the claim of the appellant was rejected and order of the AO was upheld. Following the same, in the current appeal also the disallowance made by the AO is upheld"*

16. We have heard the rival contentions and perused the material on record on this issue. The Ld. Counsel has pointed out that the identical issue has been set aside to the assessing officer by the coordinate bench in the case of the assessee itself for the assessment year 2009-10 vide ITA 760/Ahd/2013.The relevant part of the decision is reproduced as under:-

> *"5. We have heard the rival contentions and perused the material on record. As per Audit Report, the assessee had consumed the dry minerals of 74.848 metric tones and wet minerals of 54.441 metric tones during the year, which has been shown Schedule 'L' of cost of material at Rs.3003.74 lacs. The expenditure of Product Development Report was also claimed in computation of income as revenue expenditure. This has been outsourced as assessee did not have any skill/specialized personal. As per agreement, the expenditure incurred on research and development of mineral products such as, Wet Ground Calcium Carbonate, Wet Ground Talc. (High Aspect Ratio Talc.), Wet Ground ATM, Wet Ground Brucite, Sub Micron Silica, Delaminated Kaolin, High Aspect Ratio Mica, of which the priority has to be given to Wet Ground Calcium Carbonate, Talc, ATH and Brucite and subsequently, such other products which the client may feel fit. The developer had agreed to provide to the assessee services relating to carrying out of research and development of various minerals products as per Exhibit 'A' of the agreement. It is loan drawn proceeding which required equipment as well as scientific manpower to give the project report. These expenses claimed to be paid to the developer for the development of new project for which exhaustive trials are carried out by use of material and various combination and permutation. The final projects come into existence under the procedure for better manufacturing know-how for the manufacturing of particular product in more efficient and cost effective manner. The total consideration was agreed to Rs.1.5 crore as per agreement but assessee has claimed during the year Rs.55 lacs in the accounts. As per Section 35AB, where the assessee has paid in any previous year any lump sum consideration for acquiring any know-how for use for the purposes of his business. 1/6th of amount so paid shall be deducted in computing the p&l account of the business for that year. Know-how means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a*

> *mine, oil well or other sources of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto). The Product Development Report was dated 20.03.2009 and agreement was dated 12.12.2007, whereas the assessee had claimed this expenditure in A.Y. 2009-10. As per this agreement, this amount is to be paid in advance but assessee had not furnished any evidence for paying this amount to the developer during the year. Therefore, A.O. is directed to verify whether the project Report was actually used for the business purposes in this year or not and accordingly, he had paid the money in the year under consideration. Therefore, these grounds of appeal are set aside to the A.O."*

We have noticed that the claim of product development expenditure during the year under consideration also connected to the product development report dated 20.03.2009 and agreement dated 12.12.2007, therefore, this issue is also set aside to the assessing officer for re-adjudication on the line of direction issued by the coordinate bench as supra. Therefore, the appeal of the assessee is allowed for statistical purpose on this issue.

<u>Disallowance of term loan interest of Rs. 31,18000/-</u>

17. At the time of assessment proceedings the assessing officer has noticed that assesse has incurred interest on term loan of Rs. 211.89 lacs. He has further noticed that assessee has utilized these funds towards capital work in progress of Rs. 482.18 lacs and towards asset addition (excluding 54 lacs of product development knowhow) of Rs. 1623.16 lacs. The assessee was asked to furnish the detail of interest attributable to term loan to asset and capital work in progress. In this connection, the assessee has furnished the following details:-

Period	*Qtr.*	*CWIP(Op. Bal.)*	*Addition*	*Capitalized*	*New Bal. of CWIP Assests*	*Intt. charged by IDBI*	*Intt. Rate*	*Capitalized*	*Charged to Rev.*
Apr 09-June'o9	*Q1*	*460.01*	*136.21*	*316.54*	*279.68*	*15-36*	*12%*	*17.89*	*-2.53*
July 09-	*Q2*	*279.68*	*280.03*	*417.55*	*142.17*	*22.42*	*12%*	*4.27*	*18.16*

Sep.09									
Oct.09- Dec-09	*Q3*	*142.17*	*329.97*	*17345*	*298.68*	*27.92*	*12%*	*8.96*	*18.96*
Jan,10- March,10	*Q4*	*298.68*	*o*	*0*	*298.68*	*29-59*	*12%*	*0*	*29.59*
Total		*1180.54*	*746.21*	*907.53*	*1019.22*	*95-29*		*31.11*	*64.18*

The assessing officer has not satisfied with working of interest given by the assessee. He stated that assessee has given the working of interest capitalized in respect of IDBI term loan of Rs. 10 crores only. However, the term loan of the assessee has been increased at Rs. 1122.2 lacs in the second quarter. In the second quarter, the assessee had capitalized asset of Rs. 417.55 lacs and had capital work in progress of Rs. 142.17 lacs. However, the assessee had capitalized interest of Rs. 4.27 lacs only and claimed an amount of Rs. 18.16 lacs as revenue expenditure out of total interest expenses of Rs. 22.42 lacs. In quarter 3, the assessee has capitalized asset of Rs. 173.45 lacs and assessee had capital work in progress of Rs. 298.68 lacs. However, the assessee has capitalized interest of Rs. 8.96 lacs only and claimed an amount of Rs. 18.96 lacs as revenue expenditure out of total interest expenditure of Rs. 27.92 lacs. In fourth quarter, the assessee had capitalized asset of zero and capital work in progress of Rs. 298.68 lacs. However, the assessee had not capitalized any interest and claim interest of Rs. 29.59 lacs as revenue expenditure. In view of the above, the assessing officer has concluded that assessee has capitalized only around 15% and 30% interest during the quarter 1 and 3 respectively and 0% in quarter 4 in spite of the fact that assessee had opening and closing balance of capital work in progress of Rs. 298.68 lacs in quarter 4. The assessing officer has also observed that assessee had not given any working how it had arrived at figure of interest capitalized by it. The assessee has not furnished any detail like period of interest capitalized for the assets which were up to use during the quarter and period and amount of interest capitalized in respect of capital work in progress during the quarter. Consequently, the assessing officer has capitalized 50% interest out of total interest on IDBI term loan of Rs. 10 crores. Further, he has also capitalized 12% of balance term loans of 1.22 crores in respect of which neither any interest has been capitalized nor any details furnished by the assessee. Accordingly, the assessing officer has made addition of Rs. 31,18,000/-

18. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

> *"6.3 I have considered the facts of the' case, and, the submission of the appellant. The AO has made a detailed analysis of the interest to be capitalized in his order which has been reproduced above. The appellant has failed to point out any discrepancy in the computation made by the AO. On the contrary, the appellant has filed a very generalized computation on adhoc basis. Hence, the computation made by the AO is upheld, and accordingly, this ground of appeal is dismissed."*

19. We have heard the rival contentions and perused the material on record on this issue. During the course of appellate proceedings before us the assessee could not controvert the above stated detailed facts demonstrated by the assessing officer regarding the working of interest attributable to capital work in progress. We have also noticed that assessee has not substantiated its claim with relevant supporting material. In view of the above facts and circumstances we do not find any error in the decision of Ld. CIT(A). Accordingly, the appeal of the assessee on this issue is dismissed.

20. During the course of assessment proceedings, the assessing officer has not allowed the claim of the actual of debt of Rs. 4,847,92/- by stating that it is not allowable as per clause 1 of explanation 1 to section 115JB to

the act and he further not allowed the provision for bad debit to the extent of written back of Rs. 3,01,566/-

21. Aggrieved assesssee filed appeal before the ld. CIT(A). The ld. CIT(A) has referred the matter to the file of assessing officer for verification by stating as under:-

> *"9.2 The AO is directed to verify the contention of the appellant and allow the actual bad debts written off while computing the book profit as a deduction. So far as the deduction, claimed on account of provision, for bad debts written off is concerned, the AO will verify as to whether such provisions were added back by the appellant while computing the book profit u/s 115JB of the year in which the provisions were created. If it is so, the deduction claimed by the appellant will be allowed otherwise the action of the AO will stand upheld."*

22. During the course of appellate proceedings before us the Ld. Counsel has placed reliance on the decision of Vodafone Essar Gujarat Ltd. 397 ITR 55 (Guj). We have perused the above cited decision and its relevant para 23 is reproduced as under:-

> *'23. By way of culmination of above judicial pronouncements and statutory provisions, the situation that arises is that prior to the introduction of clause(i) to the explanation to section 115JB, as held by the Supreme Court in case of HCL Comnet Systems & Services Ltd. (supra), the then existing clause (c) did not cover a case where the assessee made a provision for bad or doubtful debt. With insertion of clause (i) to the explanation with retrospective effect, any amount or amounts set aside for provision for diminution in the value of the asset made by the assessee, would be added back for computation of book profit under section 115JB of the Act. However, if this was not a mere provision made by the assessee by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debt, but by simultaneously obliterating such provision from its accounts by reducing the corresponding amount from the loans and advances on the asset side of the balance sheet and consequently, at the end of the year showing the loans and advances on the asset aside of the balance sheet as net of the provision for bad debt, it would amount to a write off and such actual write off would not be hit by clause (i) of the explanation to section 115JB. The judgment in case of Deepak Nitrite Ltd. (supra) fell in the former category whereas from the brief discussion available in the judgment it appears that case of Indian Petrochemicals Corpn. Ltd.(supra), fell in the later category."*

23. We have noticed that the Ld. CIT(A) has directed the assessing officer to allow the actual bad debts written off after verification. Regarding deduction claimed on account of provision, for bad debts written off the AO will verify as to whether such provisions were added back while computing the book profit

u/s 115JB of the year in which the provisions were created. In addition to the above we direct the assessing officer to also consider the impugned issue as per the direction laid down by the jurisdictional High Court in the above cited case of Vodafone Essar Gujarat Ltd. 397 ITR 55 (Guj) dated 4th August 2017. Accordingly, the appeal of the assessee is allowed for statistical purposes.

24. In the result, the grounds of appeal 1 to 3 of the revenue are dismissed and grounds no. 1 of appeal of the assesse is partly allowed, grounds 2,3 & 5 are allowed for statistical purposes and ground no.4 of appeal of the assessee is dismissed.

Order pronounced in the open court on 11-04-2018

Sd/-	**Sd/-**
(S.S. GODARA)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 11/04/2018

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,

अहमदाबाद