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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th SEPTEMBER, 2026

IN THE MATTER OF:

CNR No. DLHC010846552025

+ **ITA 567/2025**

PRINCIPAL COMMISSIONER OF INCOME TAX - 1

.....Appellant

Through: Mr. Vipul Agrawal, SSC with Mr.
Gaoraang Ranjan and Ms. Harshita
Kotru, Advs.

versus

M/S COSMO FILMS LTD.

.....Respondent

Through: Dr. Rakesh Gupta Sr. Advocate with
Mr. Dushyant Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT (ORAL)

1. The present Appeal under Section 260A of the Income Tax Act, 1961 [**"IT Act"**] for the Assessment Year 2007-08 has been filed by the Appellant/Department against the Order dated 26.07.2023 passed by the Ld. Income Tax Appellate Tribunal [**"ITAT"**] in ITA No.2844/Del/2012.
2. Four questions of law were framed by the Appellant/Department at the time of filing the Appeal which read as under:

"A) Whether the Hon'ble ITAT erred in considering that the AO has taken adverse inference in AY 2006-07 from the AY 2007-08 in reducing the claim of deduction u/s 10B of the Act?"



B) Whether the Hon'ble ITAT has erred in considering the verification of expenses incurred in EOU and Non-EOU made by the AO?

C) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in allowing depreciation on @60% on computer accessories where it has been categorically established by the AO in the computer software that as per the Income Tax Rules only computers and computer software are eligible for depreciation @ 60% and the same cannot be extended to computer accessories and peripherals?

D) Whether on the facts and circumstances of the case and in law, the impugned order passed by Ld. ITAT is perverse and not sustainable?"

3. Notice was issued in the Appeal on 03.11.2025 regarding question Nos.(A), (B) & (D) as question No.(C) has been conclusively decided against the Appellant/Department by this Court in **ITA 1267/2010** in case of Commissioner of Income Tax v. BSES Yamuna Powers LLD.

4. The facts of the case reveal that the Assessee had claimed reduction under Section 10B of the IT Act amounting to Rs.20,83,01,011/- during the Assessment Year 2007-08.

5. A perusal of the record shows that there are five units of the Assessee, namely:

“Plant 1 - J-4, MIDC Industrial Area, Chikalthana, Aurangabad

Plant 2 - B-14/8-9, MIDC Industrial Area, Waluj, Aurangabad

Plant 3 – Bermardi Road, Village Navi Jithardi, Talukkarjan, Vadodara



*Plant 4 - Plot No. 359-B, Baska Village, Talluk Hallo
Distt. Panchmahal*

*Plant 5- Stated to be EOU at B-21, MIDC Industrial
Area, Aurangabad.”*

6. Plant No.5 is an EOU unit which is exempted from tax. Further, the Assessee maintains sales office at Mumbai, Hyderabad and Delhi, besides the registered and corporate office at Delhi. The Assessee is engaged in the business of manufacture and sales of BOPP Films etc. The issue that arose was primarily regarding allocation of expenditure between theses five units of the Assessee.

7. Aggrieved by the Order dated 30.12.2009 passed by the Assessment Officer regarding apportionment of the expenditure in the five units, an Appeal was filed by the Assessee before the Commissioner of Income Tax (Appeals) [“CIT(A)”]. Noticing that the Assessment Officer had resorted to Section 80-IA(10) of the IT Act regarding apportionment of expenditure, the Appellate Authority i.e., CIT(A), held that the provision of Section 80-IA(10) of the IT Act have no application to the instant case. After examining the nature of product, the units and the manufacturing process in each of the units, the CIT(A), vide Order dated 06.03.2012 on the matter of apportionment of expenditure has observed as under:

“2.2 I have carefully considered the submissions made by the appellant company and have gone through the assessment order. It is observed that the AO has not disputed the eligibility of the appellant for claim of deduction u/s 10B in respect of EOU Unit. The objection of the assessing officer is only with regard to quantum of deduction. According to the assessing officer, the appellant has shown disproportionately higher profits in EOU Units and lower profits in Non-



EOU units. Not satisfied with the appellant's allocation of expenses, the assessing officer has computed the profits of EOU Units on Pro-rata basis in the ratio of sales of turnover of EOU Units and Non-EOU Units. In my view, the action of the Ld. Assessing Officer cannot be justified on the facts and circumstances of the case. The appellant is maintaining separate books of accounts of EOU Units have been audited by the independent auditors and they have certified the correctness of the profit of EOU unit. Separate audited statement of accounts of EOU Units viz P & L A/c, Balance Sheet etc has been furnished before A.O., The EOU Unit is separately registered with Excise & Sales tax department, it is having separate factory building and separate production facilities. Separate sales tax returns and excise returns are filed for the EOU units. The product mix of the EOU Unit and non-EOU Units are different and these products are having different margin of profit and therefore allocation of profits of the company as a whole in the ratio of sales of EOU and Non-EOU units cannot be justified. The invocation of provisions of Section 80IA(10) by the assessing officer is apparently erroneous and it is applicable to transaction between the assessee carrying on the eligible business and any other person, where for any reasons, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business. In the appellant's case, there are no such transactions with any such "any other person".

There are apparent fallacies in the methodology of A.O. in allocation of income of the company in the ratio of sales of EOU units and Non-EOU units as it imply as if all the expenses, raw material consumption, depreciation, interest and other expenses will be equal in all units in proportion to there sales. This is practically not possible. Deferent units have different block of fixed assets and therefore depreciation will be



different in different units according to the WDV's of the respective units. The interest on term loan would also be different according to the block of fixed assets. Power & fuel expenses cannot be same in all the units as different units have different manufacturing process and the expenses has charged on actual consumption basis. The EOU units whose sales basically consist of export sales is exempted from sales tax and excise duty on such export sales and therefore, the margin in the EOU and Non-EOU units will naturally be different. In its submission, the appellant has given reasonable explanation for various expenses and the reasons for the variation of charge in those expenses in different units. The question of allocation of expenses can arise only when there are some expenses which are not identified with a particular unit and are common to various units. The assessing officer has acted on doubt and in a mechanical manner without pointing out any discrepancy in the claim of the appellant. Accordingly, on the facts of the case, the action of the assessing officer cannot be legally justified.

There is yet another important factor which clinches the issue in favor of the appellant. The A.O. has noted that the Profit of EOU Unit before tax are Rs.26.11 Crore on turnover of approx. Rs. 131.97 Crore which in percentage terms is approx 19.78%. It is seen that in the immediately preceding previous year i.e. A.Y. 2006-07, the appellant has shown profit of Rs.14.02 Crore in EOU unit on turnover of Rs.73.10 Crore which in percentage terms comes to 19.18%. Thus for the year under consideration, there is no material deviation in the % profit as compared to last year. The claim of deduction u/s 10B for the last year i.e. A.Y. 2006-07 was duly accepted in the assessment made u/s 143(3). The only objection raised by the Assessing Officer in A.Y. 2006-07 in respect of EOU Unit was in respect of allocation of senior management's salary cost, which according to A.O. should have been allocated in the ratio of sales of



EOU unit and Non-EOU units as against the appellant's allocation of 5% of total expenses. Accordingly, the assessing officer in A.Y. 2006-07 has reduced the claim of deduction by Rs. 42,95,700/- by allocating higher amount to EOU Units in relation to senior Management's salary cost. No other dispute was raised by the Assessing Officer with regard to any other items be it direct or indirect expenses or depreciation or interest etc. For the year under consideration, the appellant itself has allocated the senior management salary cost in the ratio of sales of EOU Units and Non-EOU Units and therefore the issue disputed by A.O. in the last year stands taken care of by the appellant. The principle of consistency applies in judicial proceedings even though principle of res judicata may not be strictly applicable to income tax proceedings. In accordance with doctrine of consistency, the assessing officer was not justified in deviating from the position accepted in the preceding previous year. My view in this regard are supported by following judicial precedents:-

- a) Apparel Export Promotion Council (244 ITR 734)(Delhi)*
- b) CIT vs Shriram Memorial Foundation (139 ITR 3), (Delhi)*
- c) CIT vs Godavari Corp. Ltd. (M.P.) (156 ITR 835).*
- d) CIT vs Shri Dev Enterprises (Cal.) (192 ITR 165).*
- e) Dhansi Ram Agarwal Vs. CIT (Gauhati) 217 ITR 4*

In view of the above, the action of the A.O. in reducing the claim of deduction u/s 10B cannot be justified. The assessing officer is directed to allow the



deduction u/s 10B of Income Tax Act, 1961 as claimed by the appellant. These grounds of appeal are accordingly allowed.”

8. The Order dated 06.03.2012 was further taken up in an Appeal filed by the Appellant/Department before the Ld. ITAT. The Ld. ITAT accepted the conclusion drawn by the CIT(A) as the principal challenge before the Ld. ITAT revolved around the payment of Senior Management Salary, which has been allocated by the Assessing Officer in the ratio of turnover of EOU and non-EOU units as against Appellant's allocation of 5% of total expense in Assessment Year 2006-07. The Ld. ITAT was of the opinion that the method adopted by the Assessing Officer was not justifiable and the principle applied by the CIT(A), i.e. the Principle of Consistency, is not acceptable. Accordingly, the Ld. ITAT rejected the contention of the Appellant/Department vide the Impugned Order dated 26.07.2023, by observing as under:

“22. We have carefully perused the orders of the authorities below. We find that profit of EOU unit before tax is 26.11 crores turnover of approximately 131.97 crores which, in percentage terms is around 19.78%. We find that in the immediately preceding A.Y 2006-07, the assessee has shown profit of Rs.14.02 crores in EOU units on turnover of Rs.73.10 crores being 19.18%.

23. Thus, when compared to the previous year's figures, there is not much material deviation and claim of deduction u/s 10B of the Act in A.Y 2006-07 was duly accepted.

24. We find that the entire quarrel revolves around the payment of Senior Management Salary, which has been



allocated by the Assessing Officer in the ratio of turnover of EOU and non-EOU units as against appellant's allocation of 5% of total expenses.

25. In A.Y 2006-07, the Assessing Officer was not convinced with the allocation and in the year under consideration i.e A.Y 2007-08, the assessee itself has allocated the Senior Management Salary cost in the ratio of sales of EOU units and non-EOU units. Therefore, the adverse inference of the AO in A.Y 2006-07 has been taken care of in A.Y 2007-08.

26. Considering the facts of the case in totality, we do not find any merit in the action of the Assessing Officer in reducing the claim of deduction u/s 10B of the Act. Therefore, we do not find any reason to interfere with the findings of the Id. CIT(A). Ground No. 1 accordingly, dismissed.”

9. In view of the above, this Court does not find any question of law which arises for consideration in the present Appeal under Section 260A of the IT Act.

10. The Appeal is, therefore, dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

SEPTEMBER 28, 2026

S. Zakir