IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1024 OF 2014
WITH
INCOME TAX APPEAL NO. 1025 OF 2014

Commissioner of Income Tax,
Central III, Mumbai .. Appellant
v/s.
Mirc Electronics Ltd. .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
Mr. Percy Pardiwala, Senior Counsel a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.
DATED : 9th DECEMBER, 2016.

P.C.

1. These two appeals under Section 260A of the Income Tax Act, 1961 (Act) challenge the order dated 20th August, 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order of the of the Tribunal is a common order relating to appeals for Assessment Years 2002-03 and 2003-04. Out of the two appeals filed, one relates to Assessment Year 2002-03 and the other relates to Assessment Year 2003-04.

2. The common identical question of law raised by the Revenue in both the appeals is as under :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act even though the assessee had deliberately furnished inaccurate particulars of income by making an excess claim under Section 80IA of the Income-Tax Act which led to concealment of income?*

3. The respondent assessee is engaged in the business of manufacturing of TV sets, VCR, audio and video cassettes and compact disc players. It has seven divisions under which it operates and its Head Office is situated at Andheri (E), Mumbai. One of its division being a unit at Wada is an eligible unit eligible for the benefit of deduction under Section 80IA of the Act. The Assessing Officer while finalizing the assessment for both the assessment years in quantum proceedings held that the expenses relating to top management salary (personnel expenses) which had been debited in its entirety to Head Office, should be apportioned also to the eligible unit at Wada. Therefore, he allocated 40% of the personnel expenses to the Wada unit. This was in line with the orders passed by the Assessing Officer for Assessment Year 2001-02.

4. In appeal taken in quantum proceedings, the Tribunal held that the allocation of personnel expenses which had in fact been debited to

Head Office account should be allocated to the extent of 10% to the eligible unit at Wada. The aforesaid allocation of personnel expenses by the Tribunal to the extent of 10% towards top management expenses was accepted by the respondent assessee.

5. In penalty proceedings, the Assessing Officer by an order dated 30th March, 2009 imposed penalty upon the respondent assessee under Section 271(1)(c) of the Act. This on account of claiming excessive deduction under Section 80IA of the Act by not deducting expenses attributable to it and rather debiting it as Head Office expenditure. Thus, imposing penalty of Rs.1.14 crores for A.Y. 2002-03 and Rs.1.39 crores for A.Y. 2003-04.

6. In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] by a common order dated 6th October, 2010 allowed the respondent assessee's appeal from orders dated 30th March, 2009 for A.Y. 2002-03 and 2003-04. This *inter alia* by following its order for Assessment Years 2001-02 in penalty proceedings. This deletion of penalty was essentially on account of the fact that since the expenses to be allocated to the different units is a matter of opinion and it cannot be said that there has been any concealment of the income or filing of inaccurate

particulars on the part of the assessee.

7. Being aggrieved, the Revenue carried the issue further in appeal to the Tribunal. The Tribunal by the impugned order upheld the view of the CIT(A) and held that the Tribunal has consistently been holding that 10% of the personnel expenses debited to Head Office should be allocated to the eligible unit. This allocation of 10% was purely on ad-hoc basis. Moreover, the Tribunal has held that the respondent assessee is maintaining separate books of accounts in respect of each of its unit and the expenses incurred have been debited to each such account maintained separately. No defects were found in the maintenance of the books of accounts or even in the manner of allocation of expenses. Further, the Tribunal held that no penalty can be levied on account of ad-hoc allocation of Head office expenses to the eligible units. Such ad-hoc allocation would always to subject matter of opinion and cannot be said to be on account of concealment or filing of inaccurate particulars of income.

8. It further recorded that on similar set of facts permeating through the various assessment years, the Revenue has even where penalty has been imposed by the Assessing Officer, accepted the

deletion of it by the CIT(A). In the above view, the Tribunal concluded that no penalty is warranted.

9. Mr. Kotangle, learned Counsel appearing for the Revenue submits that penalty is warranted as the respondent assessee had deliberately furnished inaccurate particulars of income. In support of the aforesaid submission, he invites our attention to the order of the Assessing Officer in quantum proceedings rendered on 10th August, 2005 herein it is recorded that :-

> *"Besides the Tribunal by directing to restrict the allocation of personnel expenses to 10% to the eligible unit for A.Y. 2001-02 tacitly accepted the need of allocation of expenses to the eligible unit for the purpose of determining the claim u/s 80IA and therefore confirmed that the claim of deduction u/s 80IA made by the assessee from year to year basis is high and excessive".*

Therefore, he submits that the penalty is justified.

10. The grievance of the Revenue as articulated by Mr. Kotangle is not sustainable. This is for the reason that it is an admitted position before us that the issue of 10% of allocation to personnel expenses to the eligible unit for the Assessment Year 2000-01 was decided by the Tribunal much after filing of return of income for the subject assessment years. Thus, it cannot be said that non-allocation of eligible

unit was deliberate to increase the profits of the eligible units. Before us, the respondent assessee in support of its submissions that non-allocation of Head Office (personnel expenses) to the eligible unit was on the basis of its understanding that only direct expenses i.e. having a direct nexus to the eligible unit is debitable. This view of the assessee in fact has found acceptance by the decision of this Court in ***Zandu Pharmaceutical Work Ltd. Vs. Commissioner of Income Tax, 350 ITR 366***. Therefore, the view / opinion of the respondent assessee in not allocating any personnel expenses of the Head Office to the eligible units is a possible view. Therefore, it cannot be said on these facts that there was any filing inaccurate particulars and / or concealment of income on the part of the respondent assessee warranting imposition of penalty. In fact, both the CIT(A) as well as the Tribunal have concurrently held so.

11. Therefore, the identical question as proposed in two appeals do not give rise to any substantial question of law. Thus, not entertained.

12. Thus, both the appeals are dismissed. No order as to costs.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**