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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 235/2018, C.M. APPL.7357/2018**
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PRINCIPAL COMMISSIONER OF INCOME TAX-7..... Appellant
versus
RALLISON ELECTRICALS PVT. LTD. Respondent
Through : Sh. Sanjay Kumar, Sh. Rahul
Chaudhary, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **26.02.2018**

1. The question of law urged in all these appeals is whether the lower appellate authorities, especially the Income Tax Appellate Tribunal (ITAT), whose order is challenged under Section 260A of the Income Tax Act [hereafter “the 1961 Act”], were justified in holding that the expenditure claimed while calculating the interest deduction under Section 80IC of the 1961 Act, was justified.

2. For Assessment Years (AY) 2008-09, 2009-10 and 2010-11, the assessee had claimed interest expenditure for its exempt unit at Baddi [hereafter referred to as “the exempt unit”] for various sums. More than half of the amounts claimed were disallowed by the Assessing Officer (AO) for all the years on the premise that the assessee had wrongly proportioned the interest for the exempt unit *vis-a-vis* the non-exempt units. The AO cited *Control & Switchgear Ltd. v. DCIT* 66 DTR 166 (Del). CIT(A), however, noticed that the

figures were segregated by the assessee, and that its contention with respect to utilisation of funds allocated by the Head Office, from its own funds, was justified. He, therefore, revised the calculations tendered and granted further relief to the assessee. This pattern uniformly applied for all assessment years. The Revenue appealed against the order of the CIT(A) but without success. The Revenue has made two-fold contentions – that the CIT(A) fell into error in permitting the assessee to file Form 10CCB afresh and that consequently there was error in respect of calculation inasmuch the assessee could not be allowed to claim or raise accumulated profits. In support of its contention, it was submitted that the Head Office had allocated the funds, which did not carry any interest. The ITAT, by its impugned order, has reasoned *inter alia* as follows:

“6.5 We find that the ld. CIT (Appeals) has allowed partial relief to the assessee on the claimed deduction under section 80IC of the Act by upholding the criteria of apportionment of indirect expenditure of Baddi Unit on the basis of sales turnover of Baddi Unit to the total turnover of other units etc. for the allocation of expenditure of interest on the basis of actual usages of funds for which a working was furnished by the assessee. This action of the ld. CIT (Appeals) has resulted in relief of Rs. 1,96,95,332/- towards the claimed deduction under Section 80IC of the Act. He has given relief of Rs.38,26,826/- on the basis that it was amount of notional ad-hoc 1% cost inputted to Baddi Unit for sales

affected by other units while computing deduction under Section 80IC of the Act. He has analysed the allocation of indirect expenditure of Baddi Unit in para No.4.1, 4.3 and 5.1 of the first appellate order and has upheld the principal of apportionment of common expenditure on the basis of sales by following the ratio of the decision of Hon'ble jurisdictional High Court of Delhi in the case of Control & Switchgear Ltd. Vs. DCIT 66 DTR 166 (Del). The Hon'ble High Court in that decision (supra) has approved the apportionment of common expenditure between the unit eligible for deduction under section 80IC and non-eligible units on the basis of turnover where specific unit-wise detail of expenditure was not furnished before the lower authorities despite specific query to this effect. The ld. CIT (Appeals) has allowed a relief of Rs.1,62,33,521/- in allocation of interest on the basis of actual usages of funds by computing interest of Rs.34,61,811/- attributable to activities of Baddi Unit as against the apportioned interest cost of Rs.2,07,54,839/- made by the Assessing Officer. The ld. CIT (Appeals) has held that the amount of Rs.2,20,39,488/- could not be considered for allocation of expenditure once the same had been added back by the assessee to its income and deleted the curtailment in profit eligible for deduction under Section 80IC of Rs.24,02,304/-. The ld. CIT (Appeals) has perused the debits and credits to the account of Head Office and taking them into consideration on a daily basis to find out the product, the product on which interest cost attributable to net use by funds by Baddi Unit has been computed by resident company at Rs.34,61,811/- has been held attributable to Baddi Unit by him. The ld. CIT (Appeals) has noted further that the assessee had opening credit balance in its books of accounts to the account of Head Office of Rs.17,57,43,596.23 from which the assessee company had deducted the investment in fixed assets out of share capital and share premium, which was derived by taking

into fixed assets as appearing in the balance sheet of Baddi Unit to the total fixed assets held by the assessee company. He has further noted that while computing the figure of actual usages of funds by the Baddi Unit the assessee has also reduced the profit declared by Baddi Unit of Rs.10,62,29,705/- in the preceding two assessment years to arrive at the opening figure of funds in use by the Baddi Unit. In absence of rebuttal of these material facts by the Revenue, we do not find reason to interfere with the first appellate order which is comprehensive and speaking meeting out the objections raised by the Assessing Officer in view of the submission of the assessee. The same is upheld. The ground Nos. 1 and 2 of the appeal are thus rejected. The appeal of the Department for the assessment year 2010-11 is accordingly dismissed.

6.6 So far as the remaining appeals of the assessee on identical issue as raised in the appeal preferred by the Department are concerned, the parties have adopted similar arguments. The ld. AR submitted that the issue may be decided in view of the decision of Hon'ble jurisdictional High Court of Delhi in the case of Controls & Switch Gear Co . Ltd. Vs. DCIT (supra). He, however, submitted that the assessee does not wish to press ground No. 4(a) raised in the appeal against the action of the ld. CIT (Appeals) by which he has reduced Rs.52,69,333/ in assessment year 2008-09 and Rs.26,21,697/- in the assessment year 2009-10 in the profit of Baddi unit eligible for deduction under section 80IC by treating the same as alleged over-valuation of stock. The ground No. 4(a) of both the appeals are accordingly rejected, So far as other grounds on the validity of deduction under section 80IC worked out by the ld. CIT (Appeals), we set aside the orders of the authorities below to the file fo the Assessing Officer to decide the issues raised in the ground Nos. 4(b) and 4(c) of the appeals preferred by the

assessee in view of our findings on an identical issue in the Departmental appeal for the assessment year 2010-11 decided above. While deciding the issue, the Assessing Officer will afford opportunity of being heard to the assessee. The ground Nos. 4(b) and 4(c) of the appeals of the assessee are accordingly allowed for statistical purposes.

7. So far as ground No. 5 questioning the action of the ld. CIT (Appeals) in upholding the disallowance of additional depreciation of Rs.51,87,590/- on new plant and machinery installed at other than Baddi unit during the year raised in the appeal for the assessment year 2009-10 is concerned, the ld. AR has not been able to improve its case before the Tribunal. We thus, uphold the action of the ld. CIT (Appeals). The ground No. 5 is accordingly rejected.

8. In the result, appeals of the assessee are partly allowed and that of the Department is dismissed.”

3. As is evident, the AO as well as the lower appellate authorities took note of the decision in *Control and Switchgear Ltd. (supra)*. In *Control and Switchgear Ltd. (supra)*, the Court utilized the formula because the assessee could not indicate— in the facts of that case, the actual figures relatable to interest expenditure. In both the cases, the ITAT and the CIT(A) have considered the assessee’s explanations and concluded that it was in a position to indicate that the concern could in fact allocate interest-free funds that enabled it to gain substantial relief. There is no error, therefore, in the findings. So far as the grievance with respect to CIT(A)’s permitting the assessee to file a second or fresh application – Form 10CCB, the Court holds that

there is no error of law *per se* and that the Revenue's contention on this score could have been aired or agitated before the ITAT. No substantial question of law arises. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 26, 2018/ajk