

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.1345 to 1350 of 2008

Commissioner of Income Tax
Chennai

Appellant in all T.C.A.'s

Vs.

M/s.Swelect Energy Systems
Ltd, "SWELECT HOUSE"
No.5, Sir P S Sivasamy Salai
Mylapore, Chennai 600 004
(Amended vide order of this
Court dated 24.09.2018
in TCA Nos.1345 to 1350
of 2018 as per the Memo
dated 24.09.2018)

Respondent in all T.C.A.'s

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunals, Madras 'B' Bench, Chennai, dated 14.12.2007 made in ITA Nos.1289/Mds/2006, 1411/Mds/2006, 1412/Mds/2006, 1289/Mds/2006, 1413/Mds/2006 and 1415/Mds/2006.

For Appellant : Mr.Karthik Ranganathan

For Respondent : Ms.Pushya Sitaraman
Senior counsel
for Ms.J.Sree Vidya and
G.Vardini Karthik

COMMON JUDGMENT

(Delivered by DR.ANITA SUMANTH,J)

These Tax Case (Appeals) are filed by the Revenue challenging an order of the Income Tax Appellate Tribunal (in short 'Tribunal') dated 14.12.2007 for the assessment years 1997-1998 to 2002-2003.

2. The assessee is a manufacturer and trader in Uninterrupted Power Supply Systems and has two manufacturing units, one at Chennai and another at Pondicherry and 78 service centres pan India. There is a corporate office from where the assessee carries on its import and trading activities as well miscellaneous jobs for other business concerns from which it earns commission.

3. The assessee claimed deduction in terms of section 80-IA of the Income Tax Act, 1961 (in short 'Act') in respect of the income earned by it from the manufacturing units as mentioned above as well as the service centres. The income from the service centres was clubbed with the income from the manufacturing unit at Pondicherry and deduction claimed for the entire sum. The Assessing Authority was of the view that the service centres constituted stand-alone independent units and the income therefrom would not be eligible for grant of relief as claimed. He thus restricted the relief claimed to the income derived from the manufacturing units alone and recomputed the income applying certain principles for the proper apportionment and attribution of expenditure.

4. In first appeal before the Commissioner of Income Tax (Appeals) (in short, 'CIT(A)'), the conclusion of the Assessing Officer to the effect that the income from service centres would not be eligible to deduction under Section 80-

IA was confirmed. The assessee did not carry in appeal this conclusion of the

CIT(A) and as such the position that the income from service centres is not eligible to deduction has attained finality, and rightly so. The CIT(A) also modified the distribution of the expenditures between the manufacturing units, i.e., Chennai and Pondicherry, and the service centres.

5. In Appeal before Income Tax Appellate Tribunal, the Revenue challenged the following two directions of the CIT(A):

- (i) Allocation of 50% of the financial expenses on turnover basis and the balance 50% in the ratio of 1:3 between the manufacturing units and trading units and
- (ii) Allocation of 20% of service centre expenses including the employees cost to manufacturing and trading units as against the allocation of the entire amount on turnover basis.

6. The Tribunal after consideration of the detailed order of the CIT(A), concurred with his conclusions, thereby rejecting the appeals of the revenue, as against which the present appeals have been filed.

7. The following substantial questions of law have been admitted by this Court for our resolution:

"(1) Whether on the facts and circumstances of the case, the Tribunal was right in holding that method of allocation of common expenditure adopted by the CIT (A) is correct when there is no legal sanction for the same, nor any data or details on the basis of which it could have been framed?"

"(2) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to benefit u/s 80IA exceeding his claim in the return as a corollary to the method of allocation of expenses adopted by the CIT (A)?"

8. We have heard Mr.Karthik Ranganathan, learned counsel for the revenue/appellant and Ms.Pushpa Sitaraman learned senior counsel appearing for the assessee/respondent.

9. At the outset, we may confirm that there is no quarrel on the position that it is only the income derived from the Chennai and Pondicherry manufacturing unit that would be eligible to deduction under Section 80IA. The inclusion of income from service centres in the claim under Section 80IA was rightly found by the assessing officer to be incorrect. As regards the allocation of expenditure, the order of assessment proceeds on the following methodologies:

- (i) Direct expenditure allocated to respective units
- (ii) Common expenditure like financial overheads allocated on the basis of the sales of the respective units.
- (iii) Interest on OD allocated on the basis of the turnover of all the units as the funds are utilized for working capital requirements of the units.
- (iv) Expenses towards business promotion/development, sales commission, commission for collection of payment, packing and forwarding, conducting exhibitions and seminars and other marketing units on the basis of the 'turnover'. No such expenses were allocated to the service centres.
- (v) The expenditure incurred by the service centres under the head 'market expenses' by the assessee were shown under Pondicherry Manufacturing Unit. Hence, they were allocated to service centres as it relates to the same.

- (vi) Salaries of engineers and employees working in service centres was directly paid from the Corporate Office and debited to expenditure under Corporate/Head Office. This was shifted to the service centres.
- (vii) While the assessee had shown the reimbursement of expenditure at Rs.103.38 lakhs as the income of the Unit at Pondicherry, the corresponding expenditure was apportioned in the ratio of sales turnover of the manufacturing and trading units, thus resulting in overstating of the profits of the Pondicherry Unit. Hence, the expenditure was apportioned to the units on the basis of the turnover.
- (viii) The assessee has shown both the expenditure and the income of the service centres as part of the financials of the Pondicherry Unit. As the assessee provides two years warranty for the sale of UPS, the Assessing Officer took the turnover of manufacturing units for the latest two years and the turnover of all the units for the preceding five years and the apportioned total expenditure incurred by the service centres including the employees cost in the proportion of such turnover.

10. As against the aforesaid methodology adopted by the Assessing Officer, the CIT(A) after detailed analysis, modified the basis for the allotment of expenditure. Though modifications were effected in respect of all the categories of expenditure, the assessee had accepted the changes effected by the CIT(A) and the revenue challenged only the two relating to financial overheads and

service centre. We restrict our discussion to the aforesaid two categories of expenditure alone.

11. As regards the financial overheads, the methodology followed by the CIT(A) was that 50% of the expenditure be apportioned directly on the basis of turnover of three (3) units and the balance of 50% be apportioned in the ratio of 1:3 between the two manufacturing units and the trading unit. As against the service centre expenses, the Assessing Officer had observed that the service centres provided free service under warranty for the new systems sold for two years and thereafter earns income from the Annual Maintenance Contract entered into with the customers. The centres also undertake installation of the new UPS systems and provide technical support during the period of warranty when necessary. The expenditure incurred was, according to the Assessing Officer, to be directly allocated to the manufacturing units, as warranty was a part of their sale transaction.

12. The CIT(A) disagreed with this treatment, since he was of the view that the assumption of the Assessing Officer that expenditure incurred by service centre on behalf of the manufacturing unit was in proportion to the total turnover of all units for a period of five (5) years had no basis. He thus re-worked the method of computation as follows:

'It is seen that the number of new units added constitute $1/5^{th}$ of the total systems in the first three years and $1/4^{th}$ in the next year and again $1/5^{th}$ in the subsequent year. However, warranty is provided for two years. If we take the total number of units added in the preceding two years, they constitute $1/4^{th}$ of the 'total units' for each of the initial years and $1/3^{rd}$ in the later years. However, it is important to note that the UPS systems sold require only installation and minimum maintenance in the first two years. As claimed by the assessee, out of

the 'total calls' for service, only 10% relate to the new units and 90% relate to the old units. Thus, out of the 'total expenses' incurred by the service centre, only 10% can be attributed to the new units installed during the latest two years apart from installation cost. As the installation charges are separately shown in the service centre expenses, they can be directly allocated to the manufacturing units. Thus, apart from 'installation charges' approximately 10% of the service centres expenses can be attributed to the manufacturing units as the assessee incurs expenditure but does not derive any deduction under Section 80IA of the Act, as per law. Hence, this ground of appeal is partly allowed.'

13. The Tribunal, after consideration of the methodology arrived at by the CIT(A), was of the view that the basis of allocation was very cogent and called for no interference.

14. Before us, the learned counsel for the assessee has relied upon the following cases, to state that the re-allocation of expenses claimed over different items of income would not amount to a substantial question of law, but is only a question of fact:

(i) *Commissioner of Income Tax Vs. EHPT India (P) Ltd* (16 taxmann.com 305).

(ii) *Commissioner of Income Tax Vs. Hindustan Lever Ltd., Chennai* [(2014) 42 taxmann.com 132(Mad)].

(iii) *Commissioner of Income Tax Vs. Manjushree Plantations Ltd.,* [(1981) 130 ITR 908 (Mad).]

(iv) *Commissioner of Income Tax Vs NIT Cris Ltd.,* [(2009) 2 taxmann.com 12 (Del)].

(v) *Principal Commissioner of Income Tax-2 Vs Mono Steel (India) Ltd.,* [Tax Appeal No.1339 of 2018 dated 10.12.2018].

15. The proposition advanced by the assessee is indeed settled by the above decisions, the exception being perversity in such apportionment and

allocation. The learned counsel for the Revenue has not brought to our notice any perversity in the method of allocation of the expenditure as followed by the CIT(A) and confirmed by the Tribunal.

16. He relies upon a decision of the Allahabad High Court in *Ema India Ltd., Vs., Deputy Commissioner of Income-tax* [(2017) 81 taxmann.com 221 (Allahabad)]. This was also a case relating to apportionment and allocation of expenditure incurred in respect of various units. A distinguishing feature however, is that the books of accounts maintained by the assessee therein had been rejected by the Assessing Officer, who found that the same were not complete or correct. The rejection of the books of accounts was upheld in appeal, the High Court confirming the factual finding that the accounts were unreliable. This case is clearly distinguishable, in so far as the computation of income and the figures relating to income and expenditure in the present case are based wholly on the books of accounts maintained by the assessee.

17. The revenue further relies on a decision of the Delhi High Court in the case of *Controls & Switchgear Co. Ltd. Vs., Deputy Commissioner of Income Tax* [(2011) 16 taxmann.com 375 (Delhi)]. The facts of this case were that the assessee was eligible for relief under Section 80 IC of the Income Tax Act. The issue before the High Court related to apportionment of the head office expenses in relation to the three units, one of which was exempt, applying the provisions of Section 14A of the Act which states that expenditure incurred in relation to income not includable in total turnover is not liable to be allowed in the computation of income. The Tribunal, upon consideration of the matter, had factually found that there was no bifurcation by the assessee of the common

head office expenses which related to all three units. This was a concurrent finding of fact and the High Court, relying on the factual findings of the lower authorities, rejected the appeal of the assessee observing that no perversity had been made out warranting interference with the aforesaid order.

18. In this case too, we are concerned with the concurrent findings of facts by the CIT(A) and Tribunal in relation to methodology to be adopted in the allocation of expenditure. No perversity is pointed by the learned counsel for the revenue in the methodology adopted by the CIT(A) and confirmed by the Tribunal.

19. The Supreme Court, in the case of *Hukam Chand Mills Ltd. Vs., Commissioner of Income Tax* ([1976] 103 ITR 548) was concerned with the apportionment of profits accruing to the assessee under several categories of businesses carried on by him in British India. The Bench concluded that the question of method of apportionment of expenditure was essentially one of fact depending upon the circumstances of the case and in the absence of any statutory fixed formula, any finding on such question would necessarily have to involve an element of guess work. The Bench, at page 552 of the report, states '*the endeavour (of apportionment) can only be said to be approximate and there cannot, in the very nature of things, be great precision and exactness in the matter*'.

20. In the absence of any material before us to indicate that the methodology for allocation of expenditure followed by the CIT (A) and confirmed by the Tribunal was incorrect or perverse, we find no reason to interfere with the

factual findings of the Tribunal and the first substantial question of law is answered in the affirmative, against the revenue and in favour of the assessee.

21. As far as the second question is concerned, we note that the quantum of deduction granted stands enhanced consequent upon the re-working of the claim by the CIT(A), to an amount in excess of that claimed by the assessee. The assessee has produced before us a chart in respect of the claim for the six assessment years in question, which is extracted below:

Asst. Year	Gross total income	80IA Deduction As per IT Return	As per Assessing officer	As per A O giving effect to CIT(A) /Tribunal order
1997-98	4,48,70,409	4,50,21,665	3,46,67,572	4,30,62,832
1998-99	3,65,97,898	3,67,22,620	1,02,39,648	2,81,15,447
1999-00	3,73,98,009	3,53,31,472	1,31,76,173	3,73,98,009 (restricted to Gross total income)
2000-01	4,92,13,068	1,43,09,023	78,82,618	
2001-02	10,37,16,896	2,56,33,361	1,53,33,359	2,88,98,053
2002-03	4,30,27,106	2,32,33,925	75,59,486	2,58,11,699

22. Mr.Ranganathan does not raise any factual dispute regarding the details set out above. Certain limitations are placed by statute on the quantum of relief allowable in relation to deductions under Chapter VI A of the Act, in terms of Sections 80A(2) and (4), 80AB, 80AC and 80B. These include a mandate that the relief granted shall not exceed the gross total income as defined under section 80B(5). The relief granted, as seen above, has been

restricted to the gross total income computed only. In these circumstances, we do not find any reason to interfere with the order of the Tribunal.

23. The second substantial question of law is also answered in favour of the assessee and against the revenue.

24. The Tax Case (Appeals) stand dismissed. No costs.

Index: Yes/No

Speaking order/Non-speaking order

(V.K.,J)

(A.S.M.,J)

07.01.2019

arr/sl

To

The Income Tax Appellate Tribunals, Madras 'B' Bench, Chennai



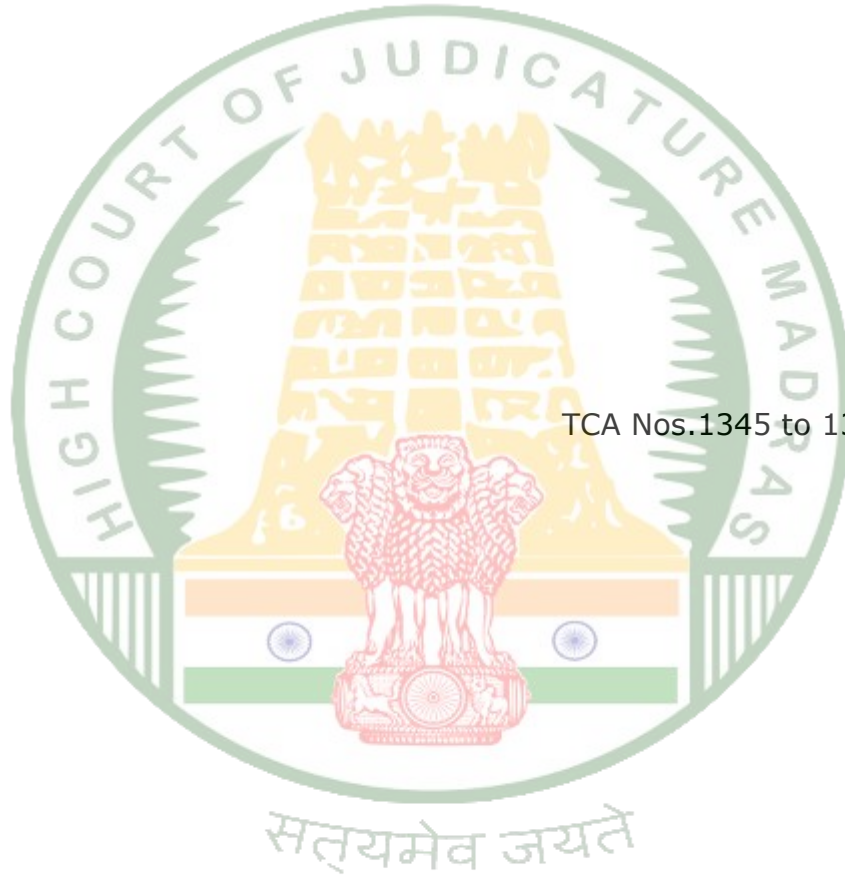
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