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

\+ ITA 794/2011

COMMISSIONER OF INCOME TAX-III ..... Appellant

Through: Appearance not given

versus

SIDWAL REFRIGERATION INDUSTRIES LTD ..... Respondent

Through: Mr. Somil Agarwal, Mr. Bharat Beriwal, Mr. Dushyant Agrawal,Advs

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **23.01.2024**

1. The Commissioner of Income Tax ["**CIT**"] assails the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 12 November 2010 which has in essence affirmed the view expressed by the CIT (Appeals) ["**CIT(A)**"]. The issue itself emanates from the expenditure which was claimed by and attributed to the two units of the assessee, one situated in Kala Amb in Himachal Pradesh and the other in Faridabad.

2. The Assessing Officer ["**AO**"] appears to have compared the expenditure which was incurred by the two units and also took into consideration that both were under the same management. The AO ultimately came to form the opinion that since both the units were engaged in similar activity, the expenses of the Faridabad unit appeared to have been deliberately inflated and thus all profits shifted to the unit situated in Kala Amb, Himachal Pradesh, which was enjoying the benefits of exemption under the Income Tax Act, 1961 ["**Act**"].

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3. It is on the aforesaid basis that the AO proceeded to hold that the amount of inflated expenses amounting to ₹ 12,78,85,496/- was liable to be disallowed and the said amount liable to be viewed as suppressed income of the assessee for Assessment Year [**"AY"**] 2006-07 and additions to be made to the taxable income accordingly.

4. While examining the correctness of the view so taken by the AO, the CIT(A) observed as under:-

> 6. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) held as under:
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> > "It is found that the Assessing Officer made a chart on page 7 of the assessment order wherein he compared the ratio of expenses of the two units to the turnover of the respective unit. The main expenses considered for comparison were the material consumed and manufacturing expenses which were the direct expenses relating to the manufacturing activities. The conclusion drawn by the Assessing Officer on the basis of comparison in this table have already been reproduced in para 2.1 above. It is found that in point (i) the Assessing Officer has arrived at the same conclusion when he says that the expenses need to be allocated proportionately between the exempted and non-exempted units (under lined part). He has also concluded that the appellant had tried to shift profit of Faridabad unit deduction. Therefore, the conclusion of the Assessing Officer was very much similar to those drawn by the Assessing Officer in the earlier years' orders. Even in point no. (iii) the Assessing Officer had mentioned that the allocation of expenses between the two units has not been done proportionately. However, rather than reallocation of other all expenses between tow units on some reasonable basis, the Assessing Officer went to disallow huge amount of Rs.12.78 crores in Faridabad unit. He arrived at this "figure by applying the expense ratio of Kala Amb unit to Faridabad unit. The amount in excess of that worked out on proportionate basis, was held to be inflation of expenses in Faridabad unit and disallowed which resulted in increase of over all profit of the company by that amount. On the other hand the profits of Kala Amb unit as well as the deduction claimed u/s 80Ic were left untouched. <u>There is no bar in arriving at different conclusion than other assessment years because every assessment is separate proceedings. However, to deviate from the consistency there have to be proper reasons and basis to support the different conclusions. The</u>

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Assessing Officer has disallowed large part of expenses at Faridabad unit. He has however not pointed out as to which particular expenses has was disallowing. An item of expenditure can be disallowed if, either it is bogus expense (not incurred at all out claimed) or if it was not incurred wholly and exclusively for the purpose of business. The Assessing Officer has not pointed out any of the above condition before making disallowance. he simply applied the ratio of expenses of Kala Amb unit to Faridabad unit and worked out the excess. Here again the Assessing Officer did not even discussed as to why the expense ratio of Kala Amb unit was to be applied to Faridabad unit. Therefore, the action of the Assessing Officer remains unsupported and unsubstantiated. The disallowance has been made arbitrarily without any material or basis to do so. In fact there is no synchronization in the observations made on the basis of earlier years' orders and the action taken by him. Therefore, in my opinion the disallowance of Rs.12,78,85,496/- is arbitrary baseless and deserves to be deleted."

5. It is this view which has ultimately been affirmed by the ITAT. We note that as has been correctly observed by both the CIT(A) as well as the ITAT, the AO has clearly disregarded the expenditure attributed to the Faridabad unit on a comparison of the expenses which were incurred in the Kala Amb unit. Both the CIT(A) as well as the ITAT have found that the entire expenditure so claimed was disallowed. The aforesaid findings came to be returned by the AO without independently being satisfied on cogent evidence that the expenses incurred by and shown as attributable to the Faridabad unit were unjustified and inflationary. The AO had arbitrarily rejected the expenses shown as having been incurred by the Faridabad unit and mechanically applied the expenditure ratio as obtaining for the Kala Amb unit.

6. In view of the above, we are of the considered opinion that the substantial question of law as framed by this Court in its order dated 06 February 2012 as to whether the ITAT was correct in not

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sustaining the disallowance made by the AO is answered against the appellant – CIT.

7. The appeal consequently fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 23, 2024/neha

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