IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI
BEFORE HON'BLE PRESIDENT, SHRI G.D.AGRAWAL
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
I.T.A. No.1454/Del/2015
(Assessment Years 2010-11)

Universal Precision Screws 146, New Cycle Market, Jhandewalan Extn. New Delhi **PAN :AABFU6927B**	Vs.	JCIT Range-39 New Delhi

Assessee by : Sh. Ashish Goel, CA
Revenue by :None (Sr. DR)

Date of hearing : 06.09.2018
Date of Pronouncement : 03.10.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Universal Precision Screws hereinafter referred to as the assessee by filing present appeal sought to set aside the impugned order dated 19.01.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-XX, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

1. "On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and

on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the various additions and disallowances made by the AO ignoring' the order of the Hon'ble ITAT in assessee's own case in earlier year, whereby the same has been deleted, in total disregard to the principle of binding precedent.

3. On the facts and circumstances of the case, the learned CIT(A) erred both on facts and in law in confirming the action of the AO in restricting the exemption under Section 10B of the Income Tax Act to an amount of Rs.52,34,341/- as against Rs.70,03,995/- claimed by the assessee and allowable under the Act.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in excluding the amount of Rs.14,21,719/- on account of interest while computing deduction under Section 10B of the Act despite the fact that such interest income is inextricably linked with the business undertaking and is part of the business profits and hence cannot be excluded while computing the deduction under Section 10B of the Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in not excluding a sum of/ Rs. 14,29,186/- being interest paid on loan used towards construction of the property while computing business income.

6. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in considering total turnover while computing exemption under section 10B to be Rs.7,18,75,940/- as against Rs. 7,14,16,743/- taken by the assessee.

7. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not excluding the scrap sale from the local turnover as well as total turnover while computing deduction under Section 10B of the Act.

8 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in not allowing deduction of an amount of Rs.14,29,186/- on account of

interest claimed under Section 24(b) of the Act while computing income from house property.

(ii) That the abovesaid disallowance had been made despite the fact that the loan on which interest has been paid was utilized for the purpose of construction of let out property.

9 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the adhoc disallowance of Rs.44,430/- made by the AO being 10% of the expenses incurred on account of entertainment expenses, travelling and conveyance.

(ii) ***That the disallowance has been confirmed despite the same being made arbitrarily and without there being any basis for the same.***

(iii) ***The disallowance has been confirmed rejecting the contention of assessee that all the expenses have been incurred wholly and exclusively for the purposes of business only.***

10 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming an adhoc disallowance of Rs. 1,00,000/- made by AO out of various expenses.

(ii) That the above disallowance has been confirmed rejecting the contention of the assessee that the same has been made on an adhoc basis without there being any basis for the same.

11 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming adhoc disallowance of an amount of Rs.25,000/- made by the AO on account of diwali expenses.

(ii) That the above disallowance has been confirmed rejecting the contention of the assessee that the expenses has been incurred wholly and exclusively for the purposes of business only."

2. Briefly stated the facts necessary to adjudicate the controversy at hand are : AO made addition of Rs. 14,21,719/- by excluding the same being interest, while computing deduction u/s 10B of the Act. AO also made addition of Rs. 14,29,186/- by not excluding the said amount being paid on loan utilized towards construction of property while computing business income. AO further treated the total turnover for computing exemption u/s 10B at Rs.7,18,75,940/- as against Rs. 7,14,16,743/- claimed by the assessee. AO has also not excluded the scrap sale from the total turnover to compute the deduction u/s 10B of the Act. AO disallowed 10% of expenses claimed by the assessee on account of entertainment expenses, travelling expenses and conveyance expenses to the tune of Rs. 44,144/-, 1,90,428/-and Rs. 2,09,737/- respectively. AO further made adhoc disallowances of Rs. 4,31,910/-, Rs.19,457/- and Rs.2,12,100/- on account of miscellaneous expenses on account of short/excess expenses and on garden maintenance respectively, on estimated basis. AO further made adhoc disallowances claimed by the assessee on account of jewellery expenses.

3. Assessee carried the matter before Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representative of the Assessee, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case. Ld. CIT DR made a request for adjournment as Senior DR is on leave. Since the issue in controversy is covered in assessee's own case for AY 2009-10, as contended by the ld. AR for the assessee by placing on record copy of the order, the contention raised by ld. CIT DR for adjournment is hereby rejected.

GROUNDS NO. 1, 2 & 3

5. Ground nos.1, 2 and 3 have not been pressed by the Ld. AR for the assessee, hence, need no adjudication.

GROUND NO. 4

6. AO as well as CIT(A) have excluded the amount of Rs.14,21,719/- claimed by the assessee on account of interest for computing deduction u/s 10B of Act. The Ld. AR for the assessee

contended that since the interest income is inextricably link with the business undertaking and as such part of the business profit and further contended that the issue in controversy is covered in assessee's favour in its own case for Assessment Year 2009-10 in ITA no. 2034/Del/2013.

7. When we examine the decision rendered by co-ordinate bench of Tribunal in assessee's own case for Assessment Year 2009-10. The issue has been decided in favour of the assessee. Operating part of the order passed by co-ordinate bench of Tribunal is extract as under for ready perusal :-

> ***"6. The next ground is against the treatment of interest income as ineligible for deduction u/s 10B of the Act. The assessee received interest on FDRs amounting to `16,01,196/-. On being called upon to explain as to how this amount was eligible for deduction u/s 10B, the assessee stated that the interest on FDR was received on 'margin kept in the bank for utilization of Letter of Credit (L/C) and bank guarantee limits from bank.' Unconvinced with the assessee's submissions, the AO treated such interest as income from other sources and did not allow deduction u/s 10B on it. The ld. CIT(A) echoed the assessment order on this point.***
>
> ***7. After considering the rival submissions and perusing the relevant material on record, we find that the AO held interest income as ineligible for deduction under section 10B(1) as it was ITA No.2034/Del/2013 not 'derived from' the eligible business. The view point of the AO would have been correct if there had been no further elaboration of the***

expression 'such profits and gains as are derived by a hundred per cent export oriented undertaking from the export of articles or things.....'. The position under consideration is not akin to some of the sections employing this expression without any further amplification of the same. Sub-section (4) of section 10B gives meaning to the expression 'profits derived from export of articles or things .....' to mean the amount which bears to the 'profits of the business' of the undertaking the same proportion as the export turnover in respect of such articles or things, etc., bears to the total turnover of the business carried on by the undertaking. A bare perusal of sub-section (4) in juxtaposition to sub-section (1) of section 10B transpires that the expression 'derived by'' used in sub-section (1) cannot be construed in its literal sense to mean encompassing only such items of income which have direct or immediate nexus with the eligible undertaking. The meaning given to this expression in sub-section (4) as referring to 'the profits of the business' makes the expression more liberal to cover any income which is ITA No.2034/Del/2013 connected with 'the business' and should not be necessarily 'derived from the industrial undertaking' alone. Turning to the nature of present interest income, being arising from FDRs obtained for margin money for the purposes of availing credit limits from banks, it becomes vivid that such interest bears the requisite characteristics of a 'business income.' The Mumbai Bench of the Tribunal in Livingstones Jewellery (P) Ltd. Vs. DCIT (2009) 31 SOT 323 (Mum) has held that interest derived by an exporter from fixed deposits made with the bank for obtaining credit limits is eligible for the benefit u/s 10A. Similar view has been expressed in ACIT vs. Motorola India Electricals (P) Ltd. (2008) 114 ITD 387 (Bang.) by holding that the interest income having close nexus with the business activity of the assessee is assessable as income from business and, hence, eligible for the benefit u/s 10A and section 10B. In view of the above discussion, we hold that the assessee is entitled to deduction u/s10B of the Act in respect of the interest income earned on FDRs made for the purposes of keeping margin money or for availing any other credit facility from banks.

> ***8. The impugned order on the issue of deduction u/s 10B is set aside and the matter is sent back to the AO for computing deduction u/s 10B afresh in conformity with our above findings and conclusions."***

8. So following the decision rendered by the co-ordinate bench of Tribunal in assessee's own case the matter is referred back to the AO for recomputation of deduction u/s 10B in view of What has been discussed above. Consequently ground no. 4 is determined in favour of the assessee.

GROUNDS NO. 5 & 8

9. AO as well as Ld. CIT(A) have not excluded the amount of Rs. 14,29,186/- claimed as interest paid on loan used for the purpose of construction of property while computing the business income. Assessee brought to our notice that this issue is also covered in assessee's favour in its own case for Assessment Year 2009-10. Co-ordinate bench of Tribunal has dealt with this issue in para 10 of the order (supra) which is extracted for ready perusal as under :-

> ***"10. After considering the rival submissions and perusing the relevant material on record, it is observed that section 24(b) talks of allowing deduction for the interest payable by the assessee where property has been acquired, constructed,***

> ***repaired, renewed or reconstructed with borrowed capital. The assessee has admittedly shown some income from let out property under the head 'Income from house property.' Once some term loan has been taken for acquiring or constructing, etc., the property, which fetched income under the head 'Income from house property', then, interest on such loan has to be allowed as deduction u/s 24(b) of the Act. The view point of the assessee to this extent is ergo accepted in principle. However, we are unable to calculate such amount of interest with precision. Under such circumstances, the impugned order is set aside on this score and the matter is sent back to the AO for verifying and ascertaining the amount of loan utilized for the building in respect of which rental income assessable under the head 'Income from house property' was earned and, accordingly, allowing deduction towards such interest u/s 24(b) of the Act. Needless to say, the ITA No.2034/Del/2013 assessee will be allowed a reasonable opportunity of being heard in such determination."***

10. So when undisputedly the assessee has paid the interest on loan utilized for the construction of property had shown its income under the head 'income from house property', interest thereon is allowable deduction u/s 24B of the Act. So following the decision rendered by co-ordinate bench of Tribunal, we direct the AO to allow the deduction claimed by the assess after verifying the amount of loan utilized, interest paid thereon and thereafter assess the income from the house property earned by the assessee, by

providing opportunity of being heard. So ground no. 5 and 8 are determined in favour of the assessee.

GROUND NO. 6

11. Ground no. 6 is not pressed by Ld. AR for assessee because of the meager amount involved, so it needs no adjudication.

GROUND NO. 7

12. AO as well as the CIT(A) has not excluded the scrap sale from turn over as well as total turnover while computing the deduction u/s 10B of the Act. This issue has also been decided in assessee's favour in its own case for AY 2009-10 by the co-ordinate bench of Tribunal, which has been affirmed by the Hon'ble Delhi High Court. Operative part of the decision rendered by Hon'ble High Court is extracted as under :-

> ***"5. In allowing the Assessee's appeal by the impugned order, the ITAT held that in terms of the judgment of the Supreme Court in CIT v. Punjab Stainless Steel Industries (2014) 364 ITR 144 (SC) sale of scrap is not includable in the total turnover since the Assessee was not engaged in the business of scrap. Consequently, the impugned orders of the CIT(A) and the AO treating the scrap amount as part of the domestic turnover was set aside.***
>
> ***6. On the above aspect, the Court finds no error committed by the ITAT as the legal position has been made***

explicit by the decision of the Supreme Court in CIT v. Punjab Stainless Steel Industries (supra). Consequently, the Court declines to frame a question on this issue."

13. So following the decision rendered by the Co-ordinate bench of Tribunal affirmed by Hon'ble High Court, we are of the considered view that the amount of sale of scrap is not includible in the total turnover or local turn over as the assessee is not into the business of scraps, so we find no illegality or perversity in the findings returned by the ld. CIT(A), hence ground no.7 is determined against the assessee.

GROUNDS NO. 9, 10 AND 11

14. Grounds No. 9, 10 & 11 have not been pressed by Ld. AR for assessee because of the meager amount involved.

15. In view of what has been discussed above present appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 3rd October, 2018.

Sd/-	**sd/-**
(G.D.AGRAWAL)	**(KULDIP SINGH)**
PRESIDENT	**JUDICIAL MEMBER**

Date: 3rd October, 2018
Binita

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

AR, ITAT