

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2778/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

M/s. Gabriel India Limited 10, Prasad Chambers Opera House, Mumbai-400004	<b>बनाम/</b>  v.	Deputy Commissioner of Income-tax-5(1)(1) Aayakar Bhavan Churchgate, Mumbai-400020
स्थायी लेखा सं./PAN:AAACG1994N		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	Shri. Karthik Natarajan & Shri. Keyur Dalal	
Revenue by:	Shri. Chaudhary Arun Kumar Singh (DR)	

सुनवाई की तारीख /**Date of Hearing** : 14.11.2018

घोषणा की तारीख /**Date of Pronouncement** : 08.02.2019

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by Assessee , being ITA No. 2778/Mum/2017, is directed against appellate order dated 19.01.2017 passed by learned Commissioner of Income Tax (Appeals)-10, Mumbai (hereinafter called "the Principal CIT(A)") in Appeal No. CIT(A)-10/DCIT-5(1)(1)/96/2015-16, for assessment year(AY) 2012-13, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated

20.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2012-13.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

*" Being aggrieved by the order passed under section 250 of the Income tax Act, 1961 ('Act') by the learned Commissioner of Income tax (Appeals)-10, Mumbai (hereinafter referred to as "the CIT(A)), your appellant submits the following grounds of appeal for your sympathetic consideration:*

1. *The learned CIT(A) erred in holding that income of INR 45,44,428/- being*

Sr No	Item of Other Income	Amount
1	Interest	17,136
2	Rent	4,17,732
3	Discount from supplies	3,77,960
4	DEPB income	4,76,975
5	Excess Provision written back	2,45,543
6	Credit balances written back	4,48,529
7	Miscellaneous income	14,390
8	Sale of scrap	25,46,572
	Total	45,44,428

*are not eligible for deduction u/s 80IC of the Act on the ground that these incomes are not derived from the eligible undertaking without assigning any reasons for coming to this conclusion.*

2. *The learned CIT(A) erred in confirming the disallowance of miscellaneous expenses amounting to INR 7,13,304/- being 2% of the total miscellaneous expense of INR 3,56,65,622/- on the ground that veracity of such expenses cannot be verified authentically in the absence of proper bills and vouchers without identifying a single bill or voucher which is not verifiable.*

3. *The learned CIT(A) erred in dismissing the ground of appeal on initiation of penalty under section 271(1)(c) of the Act on presumption of the ground being premature.*

4. *The learned CIT(A) erred in not adjudicating the ground substantively relating to charge of interest under section 234C of the Act despite the fact that the AO has neither given us any basis for charge of interest nor the calculations thereof.*

5. *The Appellant craves leave to add or amend any or all of the above grounds of appeal, if necessary.”*

3. The assessee is manufacture and seller of Ride Control Products i.e. shock absorbers, struts, front forks and components thereof . The assessee is multiple location company having its units at Dewas (M.P.), Pune, Nasik, Parwanoo, Hosur and Khandsa.

4. **Exclusion of Other Income for deduction u/s 80IC:-**

The assessee had claimed deduction u/s. 80IC of the 1961 Act to the tune of Rs. 11,03,71,511/- . From the details furnished by the assessee during the course of assessment proceedings in respect of Parwanoo unit , the AO observed that the assessee has included following items of the income under the head ‘Other Sources’ for the purpose of computing the profit of the undertakings , as detailed hereunder:-

Sr. No.	Items of Other Income	Amount (Rs.)
1	Interest	17136
2.	Rent	417732

3.	Discount from supplies	377960
4.	DEPB Income	476975
5.	Excess provision written back	245543
6.	Credit balances written back	448529
7.	Miscellaneous income	14390
8.	Sale of scrap	2546572
	Total	45,44,428

From the working of deduction u/s 80IC of the 1961 Act furnished by the assessee, the AO had observed that these items of income had been **apportioned from head office (from the non 80IC unit) in the profits of the three units for the purpose of claiming deductions u/s. 80IC**, even though these items of income have no direct nexus with nor are they derived from the business operation of the industrial undertaking on which the deductions u/s 80IC have been claimed. The AO relying upon the decision of Hon'ble Supreme Court in the case of CIT v. Sterling Foods (237 ITR 579), Pandian Chemicals Ltd., v. CIT (129 Taxman 539) and also decision of Hon'ble Supreme Court in the case of Liberty India v. CIT reported in (2009) 317 ITR 218(SC), disallowed the claim of the assessee for deduction u/s. 80IC of the 1961 Act. The AO also relied upon decision in the case of CIT v. Menon Impex Private Ltd., (259 ITR 403) (Mad) to deny the assessee deduction u/s. 80IC with respect to aforesaid items of 'Other Income' of Rs. 45,44,428/- claimed by the assessee by holding that these income were not derived from the industrial undertaking as these income were not having direct nexus with the business operations of the undertaking or were apportioned from head office to the 80IC units, vide assessment order dated 20.03.2015 passed by the AO u/s. 143(3) of the Act.

5. **Miscellaneous Expenses of Rs. 3,56,65,622/-:-**

On going through the P&L Account during the course of assessment proceedings u/s 143(3) of the 1961 Act, the AO observed that the assessee has debited an amount of Rs. 3,56,65,622/- on account of Miscellaneous Expenses. The assessee was asked to furnish the details of these Miscellaneous Expenses by the AO and the assessee furnished chart showing details of payment made and debited to the Miscellaneous Expenses account. The AO observed that these payments are in the nature of repairs to machines, shifting charges of machines, CST paid, labour charges paid, welding/fabricating charges, software AMC, godown rent, R&D block consultation charges, drawing payments, soap oil charges, lunch expenses, purchases of fruits/vegetables/groceries/flower etc., guest house expenses, KEB softwares, amounts written off etc., deposit balance written off, taxes paid and so on. The AO held that considering the nature of expenses, nexus of these expenses with business expediency and its allowability with reference to the provisions of the 1961 Act is not verifiable. The AO also held that it is not known whether income-tax deduction at source (TDS) provisions were complied with or not. The AO made ad-hoc disallowance of 2% of these expenses on the grounds that some of these expenses may not be verifiable with reference to vouchers and its supporting, which led to disallowance of these expenses to the tune of Rs 7,13,304/- and the same was added to the income of the assessee, vide assessment order dated 20.03.2015 passed by the AO u/s. 143(3) of the Act.

6. The assessee carried the matter further before the Ld. CIT(A) and on both the grounds, the assessee appeal with learned CIT(A) stood dismissed. However with respect to addition of Rs. 45,44,428/-, the learned CIT(A) observed that the assessee was prejudiced with double addition on this count which was corrected by Ld. CIT(A) by issuing appropriate directions to AO, vide appellate order dated 19.01.2017 passed by Ld. CIT(A).

7. Aggrieved with the appellate order dated 19.01.2017 passed by learned CIT(A) dismissing assessee's appeal on both the issues, the assessee has filed an appeal before the tribunal. On the first issue , the Ld. Counsel for the assessee submitted that so far as non allowability of deduction u/s. 80IC is concerned , the assessee is admitting and conceding that following income shall not be considered for deduction u/s. 80IC and the below mentioned incomes included in 'Other Incomes' are to be excluded while computing deduction u/s 80IC and the issue has to be adjudicated against the assessee.

a.	Interest Income	Rs. 17,136/-
b.	Rent Income	Rs. 4,17,732/-
c.	DEPB Income	Rs. 4,76,975/-

It was submitted that tribunal in assessee's own case for AY 2011-12 in ITA no.4550/Mum/2016 vide orders dated 10.07.2018 has decided the issue of interest income and rental income while allowing deduction u/s 80IC against the assessee , by following the decision of ITAT for AY 2010-11. Further , it was submitted that in view of decision of Hon'ble Supreme Court in the case of Liberty India(supra), the DEPB income cannot be considered for allowing deduction u/s 80IC of the 1961 Act

So far as other income apart from Rental Income, Interest Income and DEPB income , included in 'Other Income' viz. Discounts from Supplies, Excess Provision written back, credit balance written back, miscellaneous income and sale of scrap is concerned , it was claimed that the said incomes are to be considered for computing deduction u/s 80IC of the 1961 Act and the issue is to be adjudicated in favour of the assessee. The assessee had relied upon decision of tribunal in assessee's own case in ITA no. 4550/Mum/2016 dated 10.07.2018 for AY 2011-12 for allowability of income from sale of scrap. The assessee relied upon following judgement to support its contentions (a) *Quadrant EPP Surlon Uttranchal Private Ltd. v. ITO* [2017] 88

taxman.com 261 (Delhi- Trib.) and DCIT v. Ansysco [2017] 184 TTJ 1 (Chandigarh-Trib.)(UO).

So far as second issue is concerned, the assessee has strongly contended that no ad-hoc disallowance can be made as was made by the AO to the tune of Rs. 2% of the miscellaneous expenditure incurred by the assessee. The assessee has drawn our attention to page no. 22 and 23-87 of the paper book filed by the assessee wherein details of Miscellaneous Expenses are filed. The assessee relied upon the following judgements of the tribunal M/s. PNC Construction Co. Ltd. v. DCIT, ITA no. 145/Agr/2012 dated 15.02.2013, ACIT v. M/s. Perfect Circle Victor Ltd., ITA no. 2067/Mum/2007 vide order dated 30.06.2011 and decision of Mumbai-tribunal in the case of Hindustan Unilever Ltd. v. ITO, ITA no. 1144/Mum/2011 order dated 09.11.2016. The Ld. AR submitted that tax audit report was duly submitted before the AO and there is no TDS default and complete miscellaneous expenses detail were given before the AO . It was also submitted that there is no adverse comments by the learned AO/CIT(A) on these miscellaneous expenses. It was also submitted that there is no allegation by the authorities below that the expenses were not incurred wholly and exclusively for the purposes of the business of the assessee. So far as ground no. 3 and 4 are concerned these grounds are not pressed by the assessee and prayers is made to dismiss these two grounds. It was submitted that ground number 5 is general in nature and prayer was made to dismiss the same.

8. The Ld. DR on the other hand relied upon the order of the Ld. CIT(A). So far as ground no. 2 is concerned it was prayed by learned DR that this issue can be set aside to the file of the AO.

9. We have considered rival contentions and perused the material on record including cited case laws. We have observed that the assessee is manufacture and seller of Ride Control Products i.e. shock absorbers, struts, front forks and components thereof . The assessee

is multiple location company having its units at Dewas (M.P.), Pune, Nasik, Parwanoo, Hosur and Khandsa. The assessee had claimed deduction u/s. 80IC to the tune of Rs. 11,03,71,511/- . From the details furnished by the assessee during the course of assessment proceedings in respect of Parwanoo unit , the AO observed that the assessee has included following items of the income under the head 'Other Sources' for the purpose of computing the profit of the undertakings , as detailed hereunder:-

Sr. No.	Items of Other Income	Amount (Rs.)
1.	Interest	17136
2.	Rent	417732
3.	Discount from supplies	377960
4.	DEPB Income	476975
5.	Excess provision written back	245543
6.	Credit balances written back	448529
7.	Miscellaneous income	14390
8.	Sale of scrap	2546572
	Total	45,44,428

From the working of deduction u/s 80IC of the 1961 Act furnished by the assessee, the AO had observed that these items of income had been **apportioned from head office (from the non 80IC unit) in the profits of the three units for the purpose of claiming deductions u/s. 80IC**, even though as per the AO these items of income have no direct nexus with nor are they derived from the business operation of the industrial undertaking on which the deductions have been claimed. The AO relying upon the decision of Hon'ble Supreme Court

in the case of CIT v. Sterling Foods (237 ITR 579) , Pandian Chemicals Ltd., v. CIT (129 Taxman 539) and also decision of Hon'ble Supreme Court in the case of Liberty India v. CIT reported in (2009) 317 ITR 218(SC), disallowed the claim of the assessee for deduction u/s. 80IC of the 1961 Act. The AO also relied upon decision in the case of CIT v. Menon Impex Private Ltd., (259 ITR 403) (Mad) to deny the assessee deduction u/s. 80IC with respect to aforesaid items of 'Other Income' of Rs. 45,44,428/- claimed by the assessee by holding that these income were not derived from the industrial undertaking as these income were not having direct nexus with the business operations of the undertaking or these incomes were were apportioned from head office to the undertaking entitled for deduction u/s 80IC. The learned CIT(A) also dismissed the claim of the assessee for deduction u/s 80IC of the 1961 Act. The learned CIT(A) has also noted that the assessee did not furnish details before it to prove direct nexus of these incomes with the income derived from the undertaking entitled for deduction u/s 80IC of the 1961 Act. The assessee has admitted and conceded before us that following income's included in the aforesaid 'Other Incomes' are to be excluded while computing deduction u/s 80IC of the 1961 Act and the issue so far as the following incomes are concerned is to be adjudicated against the assessee, namely as under:

a.	Interest Income	Rs. 17,136/-
b.	Rent Income	Rs. 4,17,732/-
c.	DEPB Income	Rs. 4,76,975/-

The tribunal in assessee's own case for AY 2011-12 in ITA no.4550/Mum/2016 vide orders dated 10.07.2018 has decided the issue of considering interest income and rental income while allowing deduction u/s 80IC against the assessee , by following the decision of ITAT for AY 2010-11 in assessee's own. Further Hon'ble Supreme Court in the case of Liberty India(supra) has held that the DEPB income cannot be considered for allowing deduction u/s 80IC of the 1961 Act. Thus, Respectfully following the aforesaid decisions , we decide the issue of allowability of deduction u/s 80IC on interest

income, Rent Income and DEPB income against the assessee. We order accordingly.

So far as other incomes which are included in 'Other Income' are concerned viz. Discount from supplies- Rs. 377960/-, Excess Provision Written Back- Rs. 245543/-, Credit Balances written back- Rs. 448529/-, Miscellaneous Income- Rs. 14390/- and Sale of Scrap- Rs. 2546572/- the claim is made that these are income derived from the undertaking on which deduction u/s. 80IC was claimed but however AO has clearly returned contrary finding in para 4.2 of assessment order dated 20.03.2015 passed u/s 143(3) as under :-

*“4.2 From the working of the deduction u/s. 80IC furnished by the assessee, it is seen that the assessee has not reduced any other items of income from other sources from the profits of the Undertakings for computation of deduction u/s. 80IC. **More especially, the assessee has erroneously included the above-said units and income apportioned from head office (from the non-80IC Units) in the profits of the three units for the purpose of claiming deduction u/s. 80IC, even though these items of income have no direct nexus with nor are they derived from the business operations of the industrial undertakings on which the deductions have been claimed.**”*

The learned CIT(A) has also recorded finding of fact contrary to the claim of the assessee that no direct nexus of these income with the undertaking on which deduction u/s 80IC is claimed is proved by the assessee, by holding as under in para 4.2 of the appellate order dated 19.01.2017 passed by learned CIT(A):

*“ 4.2 I have carefully considered the facts of the case and submissions made by the ld. AR. I have also gone through the decisions relied on by the AO and the ld. AR. As has been rightly pointed out by the AO any income which is not “ derived from” the industrial undertaking should be removed from the working of deduction u/s 80IA/80IB/80IC etc. In the instant case the nature of income is such that they have not been derived from the business activity of the concern claiming deduction. In case of*

*scrap also the ld. AR has argued that it should allowed the benefit of 80-IC from the sale of scraps by relying on the Madras High Court decision in the case of Sundaram Industries Ltd. (2002) 253 ITR 396. He has not furnished the details of sale of scrap and its nature to bring a parallel with the decision relied on by the ld. AR. Further, the decisions relied on by the ld. AR are not binding as they are not of jurisdictional court. In view of the above, I hold that the deletion of other income of Rs.45,44,428/- from the working of 80-IC deduction is in order.”*

The Assessee has contended that these are income which are derived from the undertaking on which deduction u/s. 80IC was claimed and there is a direct nexus of these incomes with the undertaking entitled for deduction u/s 80IC of the 1961 Act but however the AO and learned CIT(A) based on material on record has recorded concurrent finding contrary to the claim of the assessee that the assessee has not been able to furnish details/evidences to prove direct nexus of these income with the income of the undertaking on which deduction u/s 80IC was claimed and their concurrent finding is not yet demolished by the assessee. The assessee has filed certain details of sale of scrap, discount from suppliers excess provision written back , credit balance written back and miscellaneous income before us which required verification by the authorities below as to its direct nexus of being derived from undertaking on which deduction u/s 80IC was claimed is required to be proved. The assessee has relied upon preceding year order of the tribunal in ITA no. 4550/Mum/2016 dated 10.07.2018 for AY 2011-12 to contend that income from sale of scrap is to be allowed deduction u/s 80IC . There is no quarrel with this proposition of the assessee that sale of scrap is to be considered for deduction u/s 80IC of the 1961 Act but however we are of the view that the assessee has to show that this income from sale of scrap has direct nexus and was derived from the industrial undertaking on which deduction u/s. 80IC was claimed to get benefit of deduction u/s 80IC . This is a factual matter and requires verification of fact and the facts may differ from year to year. Hence for verification purposes, we are restoring the matter back to the file of the AO wherein the

assessee will be required to prove through cogent evidences that these incomes from sale of scrap was derived from the industrial undertaking on which deduction u/s. 80IC was claimed, as is contemplated and required under Section 80IC of the Act. Similar is for the other incomes viz. discount from supplies , excess provision written back, credit balances written back and miscellaneous income , we are of the view that the assessee has to show that these incomes from discount from supplies , excess provision written back, credit balances written back and miscellaneous income have direct nexus and were derived from the industrial undertaking on which deduction u/s. 80IC was claimed by the assessee to get benefit of deduction u/s 80IC . Hence for verification purposes, we are restoring the matter back to the file of the AO wherein the assessee will be required to prove through cogent evidences that these incomes from discount from supplies , excess provision written back, credit balances written back and miscellaneous income were derived from the industrial undertaking on which deduction u/s. 80IC was claimed, as is contemplated and required under the provisions of Section 80IC of the Act. We have noted that the assessee had relied on the decision of ITAT, Chandigarh in the case of DCIT v. Ansysco (supra), decision of ITAT, Delhi in the case of Quadrant EPP Surlon Uttranchal Private Ltd. v. (supra) and decision of Mumbai-tribunal in assessee's own case for AY 2011-12 in Gabriel India Limited v.DCIT(supra) to support its contentions. The ground no. 1 is partly allowed for statistical purposes. We order accordingly.

10. The second issue relates to the ad-hoc disallowance of 2% of total Miscellaneous Expenditure of Rs. 3.56 crores booked by the assessee under the head 'Miscellaneous Expenses' in its books of accounts . We have observed that these payments are in the nature of repairs to machines, shifting charges of machines, CST paid, labour charges paid, welding/fabricating charges, software AMC, godown rent, R&D block consultation charges, drawing payments, soap oil

charges, lunch expenses, purchases of fruits/vegetables/groceries/flower etc., guest house expenses, KEB softwares, amounts written off etc., deposit balance written off, taxes paid and so on. The AO held that considering the nature of expenses, nexus of these expenses with business expediency and its allowability with reference to the provisions of the 1961 Act is not verifiable. The AO also held that it is not known whether income-tax deducted at source (TDS) provisions were complied with or not. The AO made ad-hoc disallowance of 2% of these expenses on the grounds that some of the expenses may not be verifiable with reference to vouchers and its supportings, which led to disallowance of these expenses to the tune of Rs. 7,13,304/- and the same was added to the income of the assessee. The learned CIT(A) confirmed the additions. We have observed that no incriminating material has been brought on record by the AO and by the Ld. CIT(A) to prove that these are not business expenses and these were not incurred wholly and exclusively for the purposes of business of the assessee. The authorities below have merely disallowed 2% of these miscellaneous expenses on ad-hoc basis without bringing any incriminating material on record merely on the presumption that these expenses may not be verifiable. The contention of the authorities below that TDS might not have been deducted on some of these expenses also lacks merit as the assessee has brought on record tax audit report to prove that there was no default in compliance of TDS. The complete details of these expenses were furnished by the assessee before the authorities below. In our considered view, disallowance of these miscellaneous expenses on ad-hoc basis @ 2% of miscellaneous expenses was made by authorities below merely on conjectures and surmises without bringing any incriminating material on record and such disallowances on ad-hoc basis in the manner done by the authorities below keeping in view facts and material on record before the authorities below is not permissible. Our view is fortified by the following decisions of tribunal relied upon by the assessee, M/s. PNC Construction Co. Ltd., v. DCIT, ITA no. 145/Agr/2012 dated

15.02.2003, ACIT v. M/s. Perfect Circle Victor Ltd., ITA no. 2067/Mum/2007 vide order dated 30.06.2011 and decision of Mumbai-tribunal in the case of Hindustan Unilever Ltd. v. ITO, ITA no. 1144/Mum/2011 vide order dated 09.11.2016. Thus, the assessee succeeds on this issue and the entire disallowance of miscellaneous expenses as was made by the AO and as confirmed by learned CIT(A) stood deleted. The ground no. 2 is allowed. We order accordingly.

11. Ground no. 3 and 4 as raised by the assessee in memo of appeal filed with the tribunal are not been pressed by the assessee and prayer is made by the assessee to dismiss ground number 3 and 4. Ground no. 5 is general in nature and does not required separate adjudication . Thus, ground numbered 3 to 5 accordingly stand dismissed .

12. In the result, the appeal of the assessee in ITA No.2778/Mum/2017 for AY 2012-13 is partly allowed, as indicated above.

Order pronounced in the open court on 08.02.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08 .02.2019 को की गई

Sd/-

(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

Mumbai, dated: 08.02.2019

*Nishant Verma*  
*Sr. Private Secretary*  
copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER  
DY/ASST. REGISTRAR  
ITAT, MUMBAI

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