IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH 'C', MUMBAI

Before Shri Rajendra Singh, Accountant Member and
Shri V. Durga Rao, Judicial Member

I.T.A.No. 1108/Mum/2010
Assessment Year : 2001-02

M/s. M/s. Cosmos Import & Export Co., 609, J.S.S.Road, Singapuri Bldg., 2nd floor, Mumbai 400 002. PAN: AAACC 3400 H	**Vs.**	The Income-tax Officer Ward 14(1)(3), Mumbai
(Appellant)		(Respondent)

Appellant by : Shri Vijay Mehta
Respondent by : Shri S.P. Prasad

O R D E R

PER RAJENDRA SINGH, AM:

This appeal by the Assessee is directed against the order dated 22.12.2009 of the Commissioner of Income-tax (Appeals)-XXV, Mumbai, for the assessment year 2001-02.

2. The assessee has challenged the order of the CIT(A) on the ground that the Assessing Officer had exceeded his jurisdiction while giving effect to the order of the learned CIT(A) dated 10.04.2008 as the order passed by the Assessing Officer was not in accordance with the direction given by the CIT(A).

3. Briefly stated the facts of the case are that the assessee in the return of income for the relevant assessment year had claimed deduction u/s.80HHC to the tune of Rs. 21,56,410/-. The Assessing Officer in the assessment order dated 27.02.2004 did not allow the deduction u/s.80HHC on the ground that there were losses during the year. The assessee disputed the decision of the Assessing Officer and the Tribunal vide order dated 26.10.2006 in ITA No. 359/Mum/2005 directed the Assessing Officer to allow deduction u/s.80HHC as per the amended provisions by the Finance Act 2005. The Assessing Officer in the consequential order dated

19.11.2007 passed under section 143(3)/254, allowed deduction u/s.80HHC to the assessee amounting to Rs. 22,05,379/-.

4. The assessee disputed the decision of the Assessing Officer dated 19.11.2007 on the ground that the A.O. had wrongly treated the interest income of Rs. 1,74,883/- as income from other sources and also raised additional ground that interest income of Rs. 1,74,883/- had been assessed twice. The CIT(A) vide order dated 10.4.2008 dismissed the first ground of the assessee relating to interest income and upheld the order of the Assessing Officer assessing the 'interest income' as 'income from other sources'. As regards the additional ground, the CIT(A) noted that 'interest income' of Rs.1,74,883/- was already included in the business profit in respect of which deduction was allowed by the A.O. and the A.O. therefore without reducing the interest income from profit of business, again added the same 'interest income' as 'income from other sources'. The CIT(A), therefore, directed the A.O. exclude the interest income of Rs.1,74,883/- from the business income while computing deduction u/s.80HHC which would have consequential effect of reducing the deduction u/s. 80HHC. Consequent to the said order of the CIT(A), the A.O. passed the order dated 21.7.2008 in which in addition to excluding the interest income from the profit of business, the A.O also reduced a sum of Rs. 8, 61,132/- being receivable from DEPB income of Rs. 32,75,027/- and deducted 90% of the balance amount of Rs. 24,13,896/- as per Explanation (baa) of the Act while in the original order 90% of the DEPB income of Rs. 32,75,027/- had been deducted. Aggrieved by the said decision of the A.O. to deduct 90% of only Rs. 24,13,896/- against 90% of Rs.32,75,027/-, the assessee has filed the present appeal.

5. Before us the learned counsel for the assessee submitted that the CIT(A) in the order dated 10.04.2008 directed the A.O. to exclude the interest income of Rs. 1,74,883/- from the profit of business while computing the deduction

u/s.80HHC which would have the effect of reducing the deduction u/s.80HHC to some extent. However, the A.O. exceeded the mandate given by the CIT(A) and in addition to deducting the interest income from the profit of business also reduced DEPB income by Rs. 8,61,132/- while deducting 90% of the same as per Explanation (baa). This was legally incorrect and accordingly it was urged that the order of the CIT(A) confirming the order of the A.O. should be set aside and the adjustment made by the A.O. on account of DEPB income should be deleted. The learned Departmental Representative, on the other hand, placed reliance on the order orders of the authorities below.

6. We have perused the records and considered the rival contentions carefully. It is clear from the records that the order dated 21.7.2008 had been passed by the A.O. to give effect to the order dated 10.4.2008 of the CIT(A). In the said order, the CIT(A) had only given direction to the A.O. to deduct the interest income of Rs. 1,74,883/- from the profit of business while computing deduction u/s. 80HHC as interest income had already been assessed separately as income from other sources. Therefore, while giving effect to the order of the CIT(A) the A.O. was only required to reduce the business profit by a sum of Rs. 1,74,883/- while computing deduction u/s.80HHC. The A.O. however, also reduced DEPB income of Rs. 32,75,027/- by a sum of Rs. 8,61,132/- while deducting 90% of DEPB income as per Explanation (baa). Thus, he reduced 90% of DEPB income of Rs. 24,13,896/- against 90% of Rs. 32,75,027/- done in the original assessment. Therefore, in making the said adjustment on account of DEPB, the AO went beyond jurisdiction as the said adjustment were not in accordance with the direction given by the CIT(A). It is settled legal position that while giving effect to the order of the CIT(A), the A.O. could only carry out the adjustments as per the directions given by the CIT(A) and cannot act on his own to make any further adjustment. The order of the A.O. is, therefore legally not in order. The order of

the CIT(A) confirming the order of the A.O. cannot, therefore, be sustained and the same is set aside. In the result, the adjustment made by the A.O. on account of DEPB income is not upheld. The AO is directed to reduce 90% of DEPB of Rs. 32,75,027/- as done in the original assessment consequent to the direction of the Tribunal.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 12TH day of November, 2010.

Sd.	Sd.
(V. Durga Rao)	(Rajendra Singh)
Judicial Member	Accountant Member

Mumbai dated the 12th November, 2010.
kn
Copy to:

1. The Assessee
2. The Revenue
3. The CIT-IV, Mumbai
4. The CIT(A)-XIV, Mumbai
5. The DR 'C' Bench, Mumbai

By order

/True copy/

Asst. Registrar, ITAT, Mumbai