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

BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER &
SHRI VIVEK VARMA, JUDICIAL MEMBER

I.T.A. NO. 5662/Mum/2011
Assessment Year : 2008-09

M/s United Liner Agencies of India P. Ltd., 16, Bank Street, Fort, Mumbai. **PAN: AAACU 5182 C**	Vs.	Dy. Commissioner of I.T., Central Circle 39, Mumbai.
(Appellant)		(Respondent)
Appellant by	:	Shri Y.P.Trivedi. (Sr. Advocate)
Respondent by	:	Shri Baban D. Patil (Sr. A.R)

Date of Hearing: 28-06-2012.

Date of Pronouncement: 04-07-2012.

<u>O R D E R</u>

<u>Per VIVEK VARMA, JM:</u>

The appeal filed by the assessee is directed against the order of CIT(A) 41, Mumbai, dated 12-05-2011, wherein the assessee has raised the following grounds :

> *1. While computing the deduction u/s 801A of the Act, the Learned CIT(A) has erred in upholding the A.O's action of not considering following incomes as eligible for deduction u/s 80-1(A):*
> *a) Rent Income Rs. 12,57,651/-*
> *b) Interest income Rs. 14,11,165/-*
> *2. The Learned CIT (A) erred in considering the A.O's action of allocating an additional expenses of Rs. 1,01,50,000/- on account of Directors Remuneration to the CFS Business while computing deduction u/s 80-IA in respect of CFS Division.*
> *3. The Learned CIT(A) erred in not considering the disallowance of expenses with regard to Staff Welfare of Rs. 3,00,000/-, Entertainment of Rs. 2,00,000/- and Miscellaneous expenses of Rs. 2,00,000/-.*

2. The facts of the case are that the assessee is in the business of handling agency work on all types of vessels such as container, combi, car carriers, heavy lifts, Ro-Ro, break bulk, bulk carriers, tankers and barges, cargo consolidation, warehousing (at certain locations) etc. Besides above service the appellant offers a special service which includes C&F, handling of heavy and ODC cargo and transport and delivery to site/final destination. The appellant is agent for "K" line-Tokyo, Waterman Steamship Corporation —USA, Shipfriend-Denmark, Turkish Cargo Line, Turkey and Century Distribution System-USA. The assessee also has a Container Freight Station at Dronagiri, Navi Mumbai. In respect of the profits derived from the above CFS operations, the assessee has claimed deduction u/s 801A of the Income Tax Act, 1961.

3. During the course of assessment proceedings, the AO noticed that the assessee had earned rental income at Rs. 12,57,651/- for providing its space and had also earned interest income of Rs. 14,11,165/- on FDR kept with the bank. the AO called for the explanation as to why these should included in the income of the assessee for computing deduction u/s 80IA, as these income are not "derived" from the business of the assessee, citing the case of Hon'ble Supreme Court in the case of CIT v/s Sterling Foods, reported in 237 ITR 579 and also since the disallowance has been confirmed by the co-ordinate Bench, vide order dated 17-03-2010 in the assessee's own case. Aggrieved, the assessee approached the CIT(A), who sustained

the disallowance following the assessee's own case for assessment year 2005-06, by the ITAT, wherein the co-ordinate Bench held, *"After hearing both the sides, we find the Assessing Officer did not consider rental income of Rs. 4,83,500/- and interest income of Rs. 10,34,649/- while computing deduction u/s 801A on the ground that such income is not derived from the industrial undertaking. In appeal, the learned CIT(A) upheld the action of the Assessing Officer by following various judicial decisions. It is by now the settled position of law that for claiming deduction u/s 801A the income has to be derived from the industrial undertaking. The learned counsel for the assessee could not substantiate as to how the rental income of Rs. 4,83,500/- and the interest income of Rs. 10,34,649/- has been derived from the industrial undertaking. In absence of such explanation the order of the CIT(A) upholding the action of the Assessing Officer is justified. Accordingly the same is upheld and the ground raised by the assessee is dismissed".*

4. The assessee is now before the ITAT.

5. Before us, the Sr. A.R appearing on behalf of the assessee conceded that this issue is covered by the assessee's own case as well as by the decision of Hon'ble Supreme Court in the case of CIT v/s Sterling Foods (supra). Since the assessee has himself conceded the issue against it, we dismiss the ground of appeal.

6. The assessee has not pressed the 2nd ground of appeal, hence it is dismissed as not pressed.

7. Apropos the third ground of appeal, the Sr. A.R pointed out that the issue has not been dealt with by the CIT(A) and, therefore, it has to be restored to the file of the CIT(A) for adjudication.

8. On going through the records placed before us, we find that in the formal grounds of appeal appended along with Form No. 35, there is no specific ground agitated by the assessee on these issues, however, in the statement of facts filed the issue has been stated.

9. On the basis of prayer made by the Senior AR, we restore the ground to the file of the CIT(A) with the direction that if at all the issue in ground No. 3 before us, has been agitated before the CIT(A) either by way of revised ground of appeal, or by way of formal additional ground of appeal, only in that case the ground may be adjudicated and decided upon.

10. In the result, the appeal is partly allowed.

Order pronounced in the open Court on this day of 04/07/2012.

Sd/-
(B.RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(VIVEK VARMA)
JUDICIAL MEMBER

Mumbai: 04/07/2012.
P/-*