आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री संजय अरोड़ा,लेखा सदस्य **एवं** श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।
BEFORE SHRI SANJAY ARORA, A.M. AND SHRI AMIT SHUKLA, J.M.

आयकर अपील सं./I.T.A. No. 8468/Mum/2010
(**निर्धारण वर्ष /** Assessment Year: 2007-08)

Dy. CIT, Central Circle-38, Room No.32(1), Ground Floor, Aayakar Bhavan, Mumbai-400 020	**बनाम**/ Vs.	Excel Industries Ltd. 184/187, S. V. Road, Jogeshwari (W), Mumbai-400 102
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACE 2488 F		
(राजस्व **/Revenue**)	:	(निर्धारिती **/Assessee**)

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आयकर अपील सं./I.T.A. No. 9132/Mum/2010
(**निर्धारण वर्ष /** Assessment Year: 2007-08)

Excel Industries Ltd. 184/187, S. V. Road, Jogeshwari (W), Mumbai-400 102	**बनाम**/ Vs.	Dy. CIT, Central Circle-38, Room No.32(1), Ground Floor, Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACE 2488 F		
(निर्धारिती **/Assessee**)	:	(राजस्व **/Revenue**)

राजस्व की ओर से / **Revenue by**	:	Shri P. K. Singh
निर्धारिती की ओर से/**Assessee by**	:	Ms. Saisudha Multani

सुनवाई की तारीख / **Date of Hearing**	:	25.09.2013
घोषणा की तारीख / **Date of Pronouncement**	:	09.10.2013

आदेश / O R D E R

Per Sanjay Arora, A. M.:

These are the cross Appeals, i.e., by the Revenue and the Assessee, arising out of the Order by the Commissioner of Income Tax (Appeals)-41, Mumbai ('CIT(A)' for short) dated 18.10.2010, partly allowing the assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2007-08 vide order dated 30.11.2009.

2. Opening the arguments for and on behalf of the assessee, it was submitted by the ld. Authorized Representative (AR), its counsel, that the only issue in the assessee's appeal (in ITA No.9132/Mum/2010) relates to the disallowance of interest attributable to a loan to a subsidiary company, incurred and claimed in the sum of Rs.24.08 lacs for the relevant year. This has been a subsisting issue in the assessee's case, with the Tribunal, for the earlier years, restoring the matter back to the file of the Assessing Officer (A.O.) for an examination of the facts and a decision in accordance with law, relying on the decision in the case of *S. A. Builders Ltd. vs. CIT* [2007] 288 ITR 1 (SC). For the same, she would take us to para 3 of the order by the tribunal in its own case for A.Y. 2000-01 (in ITA No.2825/Mum/2007 dated 15.06.2012/PB pgs.3-40). A similar course for the current year was prayed for. The ld. Departmental Representative (DR) could not bring any adverse material to our notice.

3. We observe this to be a subsisting issue in the assessee's case, with the tribunal consistently restoring the matter back to the file of the A.O. for an examination of facts and a decision in light thereof in accordance with law. It would, therefore, only be appropriate that the matter is accordingly set aside to the file of the A.O. to be decided likewise, i.e., after an examination of the facts and in accordance with the law after allowing the assessee an opportunity of being heard. We decide accordingly. This decides the only issue arising in the assessee's appeal.

4. The Revenue's appeal (in ITA No.8468/Mum/2010), the ld. AR would continue, is in respect of issues that stand covered by the orders by the tribunal in the assessee's own

case for the earlier years, submitting a summary in this respect. Proceeding ground-wise, the first issue is *qua* disallowance u/s.14A in respect of dividend income received by the assessee for the relevant year (Rs.137.18 lacs), which is claimed and allowed as exempt u/s. 10(15) of the Act. While the tribunal for the earlier years, i.e., A.Ys. 2000-01 and 2004-05, had restricted the disallowance to 2% of the dividend income, for the later years, i.e., A.Ys 2005-06 and 2006-07, the matter has been set aside to the file of the A.O. to be decided afresh in terms of the decision by the hon'ble jurisdictional High Court in the case of *Godrej and Boyce Manufacturing Co. Ltd. vs. Dy. CIT* [2010] 328 ITR 81 (Bom). She would then take us to the relevant part of the said orders, being para 11 (in ITA No.4134/Mum/2009 for A.Y. 2005-06 dated 13.07.2011/PB pgs.43-55) and para 2 (in ITA No.3457/Mum/2010 for A.Y. 2006-07 dated 18.11.2011/PB pgs.56-66). A similar treatment for the current year was also sought, with the ld. DR being unable to rebut or controvert the said statement of the case by the ld. AR in any manner.

5. In view of the consistent stand by the tribunal; the matter being even otherwise required to be decided in terms of the binding decision by the hon'ble jurisdictional high court, we have no hesitation in likewise restoring the matter back to the file of the A.O., for being decided in light thereof after allowing the assessee reasonable opportunity to state its case. We decide accordingly.

6. All the other grounds of the Revenue's appeal, it was submitted by the ld. AR, raise one principal, common issue, i.e., whether the benefit arising out of the advance license (or for that matter any other scheme), viz. DEPB pass book scheme or DFRC benefit, accrues to the assessee in the year in which the export is made, or the year in which the license has actually been either sold or otherwise availed of through imports. The matter has since been decided by the hon'ble jurisdictional high court in favour of the assessee, referring to its decision dated 25.11.2011 (in ITA (L) No.1183 of 2011), so that the same would be in the year of sale/transfer of the license, and not the year of its grant (copy on record/PB pgs.1-2). The matter was thus pleaded to be covered in its favour.

7. We observe that the AO has relied on the decision in the case of *CIT vs. Punjab Bone Mills* [1998] 232 ITR 795 (P&H), which is on the point and, further, since upheld by the apex court (at [2001] 251 ITR 780 (SC)), clarifying that accrual, which in that case was in context of cash incentive on exports, would be when the right to receive the incentive arose, i.e., when a valid claim for cash incentive was filed by the assessee with the relevant department of the government after the execution of the export. The same is, in fact, also consistent with the guidance note issued by the Institute of Chartered Accountants of India in the matter, and toward which the AO has relied on the decision in the case of *CIT v. U.P. State Industrial Corporation Ltd*. [1997] 225 ITR 703 (SC). On this being pointed out to the ld. AR, she would submit that the special leave petition (SLP) by the Revenue against the decision by the hon'ble jurisdictional High Court dated 25.11.2011 in its favour (supra) has since been admitted by the apex court, and in fact even the hearing in the matter concluded on 19.09.2013, furnishing the details of the relevant appeals, being Civil Appeal No.19898 of 2012 and CA No.125 of 2013. Accordingly, it was proposed by the Bench, and agreed to by the parties, that the matter in respect of the Revenue's ground nos.3 to 6 be restored back to the file of the A.O. to be decided in accordance with the law and in light of the decision by the apex court thereon, which, in any case, being binding, is to be followed. We dispose of the Revenue's ground nos.3 to 6 in these terms. We decide accordingly.

8. In the result, the both the Revenue's and the assessee's appeals are allowed for statistical purposes.

परिणामतः राजस्व और निर्धारिती की अपीलें सांख्यकीय उद्देश्य के लिए स्वीकृत की जाती है ।

Order pronounced in the open court on October 09, 2013

Sd/-	Sd/-
(AMIT SHUKLA)	(SANJAY ARORA)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांकDated : 09.10.2013

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**