

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "H",
MUMBAI

BEFORE SHRI N.V.VASUDEVAN(J.M) & SHRI R.K.PANDA (A.M)

ITA NO.6447/MUM/2009(A.Y. 2006-07)

The Addl. CIT, Rg.14(1), 201, 2nd
Floor, Earnest House,
Nariman Point, Mumbai – 21.
(Appellant)

Vs.

Tribhovandas Bhimji Zaveri,
241-43, Zaveri Bazar, Mumbai
400 002,
PAN: AAFT0950A
(Respondent)

ITA NO.6480/MUM/2009(A.Y. 2006-07)

Tribhovandas Bhimji Zaveri,
241-43, Zaveri Bazar, Mumbai 400
002,
PAN: AAFT0950A
(Appellant)

Vs.

The Addl. CIT, Rg.14(1), 201,
2nd Floor, Earnest House,
Nariman Point, Mumbai – 21.
(Respondent)

Assessee by : Dr. K. Shivram
Revenue by : Shri V.V.Shastrri

ORDER

PER N.V.VASUDEVAN, J.M

ITA No.6447/M/09 is an appeal by the revenue while ITA No.6480/M/09 is an appeal by the assessee. Both these appeals are directed against the order dated 22/9/2009 of CIT(A) XXV, Mumbai relating to Assessment year 2006-07.

ITA No.6447/M/09- Revenue's Appeal:-

2. The grounds of appeal raised by the revenue read as follows:

“1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in directing the AO, to allow the deduction u/s. 80 IB of the Act in respect of the profit of Hyderabad Unit without appreciating the fact that the branch has not carried out any manufacturing activity.

2. On the facts and circumstances of the case, the ld. CIT(A) erred in directing the AO to allow deduction u/s. 80 IB of the Act in respect of the profit of Hyderabad Unit without appreciating the fact that the branch is not an industrial undertaking.

3. Without prejudice , not appreciating that even if it is treated as an industrial undertaking, the profit of the Hyderabad branch shown exceptionally high i.e. Gross profit and net profit is high as compared to its Mumbai branch's gross profit and net profit in order to claim higher deduction u/s. 80 IB.”

3. The assessee is a partnership firm engaged in the business of manufacturing and trading of gold, diamonds and platinum jewellery. The assessee has claimed deduction u/s. 80 IB of the Income Tax Act, 1961 (the Act) of Rs. 1,00,31,186/- being 25% of the profits of Hyderabad branch (Rs.4,08,58,938 being profit of Hyderabad Branch as per P&L less Rs.6,78,696(depreciation)and Rs. 55,500(donation) = Rs. 4,01,24,744/-]. This deduction was disallowed by the department from A.Y. 2002-03 to A.Y 2005-06 on the ground that Hyderabad unit is only a trading branch and not a new industrial undertaking. The CIT(A) and ITAT had decided the issue in favour of the assessee from A.Y. 2002-03 to 2004-05 and appeal for A.Y 2005-06 was pending. According to the AO, the department has not accepted the orders of CIT(A)/ITAT and appeals before High Court/ITAT have been filed by the department, which are pending. The AO thereafter held that there was no plant and machinery or workers in the Hyderabad branch for manufacturing the jewellery and even at head office at Zaveri Bazar, Mumbai. The AO also held that the assessee gets its jewellery made by a large number of Karigars approximately 100 to 150 in numbers, for which the designs are given by the assessee and after that karigars make jewellery at their own premises, spread across various locations, where no supervision

of manufacturing activities is feasible or carried out by the Assessee. Only when the karigars bring back the jewellery made, the assessee approves and accepts it after comparing it with the design. The AO therefore held that there are no manufacturing activities. The AO also held that there was complete interlacing of funds, control and management between the Head Office at Zaveri Bazar and Branch Office at Hyderabad. The funds are transferred from Head Office and various expenses which are vital for the survival of the Hyderabad Unit are also incurred at head office. Regular visits of the personnel from Head Office are undertaken to Hyderabad and to say that Hyderabad Unit is an independent new undertaking is not correct. The AO held that the Hyderabad Unit was expansion or reconstruction of the business already in existence and it fails to meet the basic condition of section 80IB(2). The assessee fails to meet any of the requirement of sec. 80 IB i.e.

- (a) It is not an industrial undertaking.
- (b) It is not engaged in the manufacturing / production of any article or things.
- (c) It is not an independent unit but an extension/expansion of the business already in existence.
- (d) There was no manufacturing done even in Head Office at Zaveri Bazar.
- (e) There was no Plant & Machinery or workers in Hyderabad Branch or Zaveri Bazar, Mumbai or in any other branch for manufacturing of jewellery.
- (e) There was complete interlacing of funds, control and management between Hyderabad Branch and Zaveri Bazar head office.

The AO therefore held that the profits of Hyderabad Branch cannot be said to have been derived from industrial undertaking and the deduction u/s. 80 IB is not admissible to the assessee.

4. Without prejudice to the above, the AO also held that in case the Assessee is found to be eligible for deduction u/s.80-IB of the Act,

assessee's working of profits derived from Hyderabad Branch is not correct as several expenses pertaining to branches have not been allocated to the Hyderabad branch leading to inflated profit of the Hyderabad Branch. The AO thereafter tabulated the sales and the expenses incurred in the various branches as follows:

Branch	Head Office	Hyderabad	Borivali	Ghatkopar	Total
Sales in crore	93,07,90,248	61,08,65,249	55,11,06,194	30,98,03,130	2,40,25,64,821
Net profit in crores before depreciation	(-)4,68,09,470	4,08,58,938	2,20,87,139	72,36,606	
Liability/loan in the name of head office in the balance sheet.		14,91,98,010	13,86,89,772	14,03,92,479	The interest cost of these funds is incurred only in head office
Expenditure = (before depreciation) Sales- net profit.	97,75,99,718	57,00,06,311	52,90,19,055	30,25,66,525	
Depreciation	29,65,239	6,78,686	8,64,105	4,91,239	
Total expenditure including depreciation	98,05,64,957	57,06,84,997	52,98,83,160	30,30,57,764	2,38,41,90,878
Ratio of expenditure/ sales	1.05	0.93	0.96	0.99	Ratio of greater than one for HO establishes the fact that the allocation of expenses to branches has not been done properly.

5. According to the AO, the loss in the head office was because of several common expenses in head office not having been allocated to branches. According to the AO, the following expenses shown in head office ought to have been allocated to the various branches:

Sr. No.	Description	Amount
1.	Partner's remuneration	2,24,99,181
2.	Partner's interest	1,81,80,170
3.	Other interest	33,41,438
4.	Exhibition expenses	31,25,659

5.	Foreign traveling	15,07,611
6.	Travelling Expenses	4,91,250
7.	Advertisement	1,21,95,921
8.	Hall marking charges	24,38,217
9.	Bank charges and interest	1,07,37,933
10.	Melting Refining testing etc.	1,50,392
	Total	7,46,67,772

According to the AO, the above list was illustrative and not exhaustive. The AO also held that even the interest cost in head office and partner's remuneration has not been allocated to branches. The Assessee reiterated its stand that its allocation of expenses amongst the various branches was proper. According to the AO the same was not correct. The AO, therefore, rejected the books of account of the Assessee u/s. 145(3). He thereafter allocated expenses in the ratio of sales to arrive at the profit of each branch as under.

Branch	Head Office	Hyderabad	Borivali	Ghatkopar	Total
Sales in crore	93,07,90,248	61,08,65,249	55,11,06,194	30,98,03,130	2,40,25,64,821 "A"
Ratio of sales branch to total Sales "B"	0.39	0.25	0.23	0.13	
Allocation of , total expenditure [Rs. 2,38,41,90,878/-] in the ratio "B"	92,98,34,442	59,60,47,720	54,83,63,902	30,99,44,814	
Reworked profit (Sales - allocated expenditure)	9,55,806	1,48,17,529	27,42,292	1,41,684	

The AO therefore held that without prejudice to the finding in this order that Hyderabad Branch is not eligible for deduction u/s. 80IB, and if it is held that the Hyderabad Branch is eligible for deduction u/s. 80 IB, even then the allowable deduction would be only 25% of [1,48,17,529 - 55,500] i.e. Rs. 36,90,507 and not Rs. 1,00,31,186/-.

6. Before CIT(A) the assessee pointed out that in respect of the rejection of claim for deduction under section 80 IB of the Income Tax Act, 1961(the Act) on the ground that the assessee is not engaged in manufacturing activity and that it is not an independent new unit, the Tribunal has in assessee's own case in A.Y 2002-03, which is the first year of claim of deduction under section 80 IB of the Act in respect of Hyderabad Unit, in ITA No.8316/M/03 by its order dated 13/6/2007 already allowed the claim for deduction. It was also pointed out that the said order has been followed by the Tribunal in assessee's own case in assessment year 2003-04 and 2004-05. On the issue of non-allocation of expenses while arriving at the profits of the Hyderabad Unit and consequent rejection of the books of accounts of the Hyderabad Unit, the assessee pointed out those expenses are exclusively related to HO, only. The Hyderabad Unit is an independent unit having the turnover of Rs.61 crores and has also incurred various expenses under various heads to the tune of Rs. 3.10 crores which are necessary for running of the said unit/branch. Under these circumstances, there is no question of further allocating any expenses which are incurred at Head office except the expense of interest which has been allocated by the assessee itself to the said branch to the extent of Rs.41 lakhs. The Assessee pointed out that the list of expenses shown by the AO in paragraph 8 of the order of assessment also shows the advertisement expenses of Rs.1.22 crores for allocation, without appreciating the fact that Hyderabad branch itself has incurred advertisement expenses of Rs.25.28 lakhs. Similarly the Assessee pointed out that the working partners stay in Mumbai only i.e. HO and therefore they work in Mumbai only. There is hardly any time which is devoted for the branches by them since all the branches are independent establishments and they incur their expenses for running the said branch. The Assessee pointed out that there was a branch manager under whose superintendence the branch runs and who is responsible for the concerned branch and is also accountable. Under these circumstances, the Assessee submitted that there

was no reason to pick up some high expenses incurred at HO and hold that these expenses should have been allocated to the branches.

7. Apart from the above the assessee also pointed out that the expenses detailed by the Assessing Officer in the order of assessment cannot be allocated to the Hyderabad Unit for the following reasons :

S.No.	Expenses	Amount Rs.	Explanation
1.	Partner's remuneration	2,24,99,181	Detailed submissions have been given on page 7 and 8 of earlier submission dtd. 5/9/2009. Further the HO is 160 years old establishment. Therefore, its investment is in various assets. And the capital of the partners is accordingly invested in the HO assets only. Therefore no part of interest paid to partners can be allocated to branch.
2.	Partner's Interest	1,81,80,170	
3&9	Other Interest	33,41,438	Hyderabad unit itself shows debit of Rs.57,96,008 to this account which includes the interest on CC A/c. and gold loan account allocated to the said branch on the basis of the utilization of funds by the branch. Thus allocation has been already made.
	Bank charges and interest	1,07,37,933	
4.	Exhibition Expenses	31,25,659	Expenses already allocated to Hyderabad branch Rs.5,54,013.
5.	Foreign Traveling Expenses	15,07,611	These are incurred by the partners who are sitting at the HO as well as staff members of HO. Under these circumstances there is no question of any allocation.
6.	Traveling Expenses	4,91,250	As against debit of Rs.4,91,250 in HO A/c. , the branch itself has shown traveling expenses of 11,05,000. Therefore, also the question of allocation does not arise.
7.	Advertisement	1,21,95,921	These expenses when incurred on all India level advertisement is given, is allocated to all the branches. However, the expenses incurred for regions are paid and debited by the respective branch in their accounts only. Thus, this branch has shown advertisement expenses of Rs.25,27,503 which includes the allocated portion.
9.	Bank charges & interest	1,07,37,933	Covered above at Sr. No.3
8&10	Hall Marking charges	24,38,217	These expenses are also allocated in the sense that while reimbursement of the making charges to the HO making charges per unit are fixed by HO at a figure after considering the hall making charges and melting charges. Thus they are included in the same. For the branches these are included in the purchase price only and hence not separately reflected.
	Melting refining testing etc.	1,50,392	

8. The CIT(A) after considering the submissions made by the assessee held as follows:

“10.6 On considering both the reasons given by the AO in his order and the arguments advanced by the appellant in the above submissions, the facts which are emerging are that in the first instance the AO has disallowed the claim of deduction u/s. 80IB on the ground that the department has not accepted the order of the CIT(A)/ ITAT for AYs 2002-03 to 2004-05 and appeal for A.Y 2005-06 is pending and the department has filed appeals before the HC/ITAT which are pending. He has also observed that reliance placed on the decision of Penwalt India Ltd. is distinguishable on the facts as discussed in detail in the assessment order for A.Y 2005-06 and the controversy has been settled by the Apex Court in the case of M/s. Sterling Food Ltd. and Pandian Chemicals. Admittedly and evidently, merely on the ground that the decisions of Hon’ble ITAT and CIT(A) have not been accepted by the department, the disallowance of the claim of deduction u/s. 80IB cannot be sustained, more so when the facts and circumstances for the year under appeal are not established to be distinct and distinguishable to the facts and circumstances on the basis of which earlier years’ appeals were decided in favour of the appellant. Further, I also find that the reference made to the assessment order for A.Y 2005-06 stating that discussions in details made by holding that the decision of Penwalt India Ltd. is not applicable to the facts of appellant’s case, as on now stands having no relevance as my ld. predecessor has decided this issue in favour of the appellant by following the Hon’ble ITAT’s order in the case of appellant itself for the earlier years. Moreover, the reliance placed on the apex court’s two decisions by the AO claimed having settled the issue are also having found distinguishable and not applicable to the appellant’s facts as in these two cases the limited issues were import entitlement being eligible for deduction and interest from deposits etc. and not that the industrial unit having established and admitted to be into the manufacturing activity as in the case of the appellant. Therefore, the denial of deduction on these grounds by the AO is not justified. Hence, respectively following the decision of Hon’ble ITAT for earlier years and of my ld. predecessor for A.Y. 2005-06, the AO is directed to allow the claim of deduction u/s. 80 IB of IT Act to the assessee for the year under appeal as well.

10.7 further observations made by the AO stating that in Hyderabad unit, there is no plant and machinery or workers for manufacturing the jewellery and complete interlacing of funds, control and management between the head office and branch at Hyderabad and holding on this basis that the assessee failed to meet the requirement of 80 IB hence the deduction is denied on this ground as well, is also not having any justification in view of the submissions made by the appellant stating that the Hyderabad Unit being an independent manufacturing unit having been established since A.Y. 2002-03 and having its own plants and machinery and workers etc. and the appellant having never admitted that there is no plant and machinery and no workers whereas as per the order sheet entry, the AR of the appellant who was having no knowledge about the Hyderabad unit as the accounts of Hyderabad unit are audited and maintained by the separate auditors. Therefore, merely taking a signature in the order sheet entry does not empower the AO in ignoring the facts from the accounts and statement of account furnished along with the return of income. Admittedly, machineries as explained in the above submissions are found reflected in the balance sheet i.e. in the block of assets and also wage sand salaries are paid and debited in P&L A/c. The AO has, thus, not brought on record any material evidence establishing the fact and the appellant is not having any machinery and not engaged any workers in the Hyderabad unit and merely on the basis of order sheet entry concluded that the requirements of section 80 IB are not fulfilled. It is also a fact that these requirements are the primary requirements which at the beginning of the year are required to be fulfilled. In the case of the appellant, since the Hon'ble ITAT and the then CIT(A) having found that all the conditions fulfilled for claiming deduction u/s. 80IB have thus allowed the appeals in its favour upto the A.Y 2005-06. Therefore, this observation of the AO is also having no justification cannot be sustained.

10.8 The alternate observation of the AO that the assessee's working of deduction u/s. 80IB is also not correct and if the correct allocation is made, the allowable deduction would be at Rs. 36,90,507/- has also been claimed by the appellant in the above submissions as erroneous and factually not correct. To this extent, the appellant has pointed out that the expenses on account of other expenses, bank charges and interest etc. to the extent of Rs. 57,96,008/- is pertaining to Hyderabad unit and is claimed in the P&L Account. Similarly, exhibition exp. and traveling expenses and advertisement expenses to the extent of Rs. 5,54,013/-, Rs.11,05,000/- and Rs. 25,27,503/- respectively are included and claimed in Hyderabad unit and for the partner's remuneration and interest, the reason for not including the same is stated to be that because the head office being 160 years old

establishment and all the investment of partners and capital of the partners invested in head office assets only, and no part of interest paid to partners is allocable to branch and for the hallmarking charges, melting refining testing etc. are met when the reimbursement of making charges to head office are made. Therefore I find the considerable force in these contentions of the appellant and also find that the same are factually correct. In view of these facts, and explanations given by the appellant which are found to be reasonable and acceptable, the re-allocation made by the AO by ignoring these facts is also held to be not justified. Therefore, the entire deduction claimed by the appellant u/s. 80 IB is held to be eligible deduction. This ground, therefore, is decided in favour of the appellant.”

9. Aggrieved by the order of the CIT(A) the revenue has preferred the present appeal before the Tribunal.

10. We have heard the rival submissions. The ld. Counsel for the assessee relied on the order of the CIT(A). The ld. D.R reiterated the stand of the Assessing Officer as reflected in the order of assessment.

11. We have considered the rival submission. As far as the refusal of the claim for deduction under section 80 IB on the ground that the assessee was not engaged in manufacturing activities we find that the Tribunal in assessment year 2002-03(supra) has already held as follows:

“11. We have considered the submissions made by both sides, material on record and orders of authorities below. Admittedly, assessee has established a new unit at Hyderabad. The assessee is in the business of jewellery manufacturing. The pattern and designs of jewellery change in accordance with the customers choices in different regions. The assessee’s unit situated at Hyderabad is accordingly getting it’s manufacturing of jewellery at Mumbai under the supervision and control of its employees through the help of Mumbai office. Thus, mere involvement of Mumbai office cannot be so dominant so as to ignore the actual nature of operations carried on by the Hyderabad unit. It is also not in dispute that assessee’s unit is maintaining separate books of account and it is a part of the same assessee, hence, internal entries made in the books of account of Head Office and this unit cannot over shadow the nature of operations. We also

find that the facts of the case are identical to the facts of Penwalt India Ltd.(supra), hence, the ratio of the decision of the Hon'ble jurisdictional High Court in that case is binding on us. It is further noted that all other conditions have been satisfied and particularly, the artisans are external parties. In view of the matter, we hold that assessee is entitled to the deduction u/s. 80 IB of the Act in respect of its Hyderabad unit. Accordingly, the order of learned CIT(A) is confirmed. We further held that the alternate contention regarding gross profit and net profit shown by the Hyderabad unit is also not maintainable because it does not emerge from the orders of the Revenue authorities and it will require fresh investigation into the facts. Thus, this ground of the Revenue also fails.”

In fact the aforesaid order has been followed in assessee's own case in A.Y.2003-04 in ITA No.6624/M/05 and A.Y 2004-05 in ITA No.4317/M/06. It has also been mentioned by the ld. Counsel for the assessee that revenue's appeal to the Hon'ble High Court has also been dismissed. In view of the above we do not find any merits in the grievance projected by the revenue in this regard.

12. As far as non-allocation of common expenses in arriving at the profits of the Hyderabad Unit and the consequent rejection of books of accounts by the Assessing Officer, we find that a similar stand was sought to be taken by the revenue in A.Y 2002-03 before the Tribunal but was rejected by the Tribunal for the reason that the Assessing Officer did not make out such a case in the order of assessment. As far as the case made by the Assessing Officer in the present assessment year is concerned, we find that the assessee has given proper explanation with regard to non-allocation of each of the expenses pointed out by the AO in the order of assessment, while arriving at the profits of the Hyderabad Unit. Before us no facts have been brought to our notice to show as to how the claim made by the assessee cannot be accepted. We find that the Assessing Officer has made the allocation based on turnover ignoring the nature of expenses and its nexus with the Hyderabad Unit. In our view the CIT(A) has found that the claim

made by the assessee is factually correct. We are also satisfied with the explanation provided by the assessee with regard to non-allocation of disputed expenses while arriving at the profits of the Hyderabad Unit. We, therefore, confirm the order of CIT(A) on this issue also.

13. In the result, the appeal by the revenue is dismissed.

ITA No.6480/M/09-Assessee's Appeal:-

14. Ground No.1 raised by the assessee reads as follows:

“1. Disallowance of Telephone expenses Rs.1,76,953/-

On the facts and circumstances of the case and in law, the lower authorities erred in not restricting the disallowance of telephone expenses at Rs. 61,580/- as per the past practice of several years.”

15. The assessee had claimed telephone expenses of Rs. 14,18,103/-. The break-up of the expenses in the various branches of the assessee were as follows:-

S.No.	Branch	Expenditure	Disallowance by assessee for personal use
1	Zaveri Bazar	9,53,331	2,38,333
2	Hyderabad	2,79,061	Nil
3	Borivali	1,75,099	Nil
4	Ghatkopar	1,06,132	Nil
		14,18,103	2,38,333

16. As can be seen from the above chart the Assessee on its own disallowed 25% of Rs.9,53,331/- being expenses incurred in the Zaveri Bazaar Branch at Mumbai in the computation of total income. In the proceedings before Assessing Officer assessee claimed by a letter dated 6/11/2008 that the disallowance for personal use of telephone for Zaveri Bazaar Branch should be restricted to Rs.61,580/-, 25% of Rs.2,88,333/-. The Assessing Officer however, rejected the claim of the assessee for the reason that there was no valid revised return filed under section 139 (5) of

the Act. The Assessing Officer also noticed that sum of Rs. 1,65,573/- was Mobile phone expenses of partners including non-working partners. The assessee could not prove that the partners had personal mobile phones for personal use. The Assessing Officer accordingly disallowed 20% of the total telephone expenses namely a sum of Rs. 2,83,621/-. Since the assessee had itself disallowed Rs. 2,38,334/- the Assessing Officer made an addition of Rs.45,288/- to the income returned by the assessee.

17. On appeal by the assessee the CIT(A) held that the addition should be restricted to the disallowance made by the assessee in its return of income and deleted the addition of Rs. 45,288/- made by the Assessing Officer.

18. Aggrieved by the order of the CIT(A) the assessee has raised ground No.1 before the Tribunal.

19. The Id. Counsel for the assessee had brought to our notice the details of telephone expenses which are at page 79 of the assessee's paper book. It was further brought to our notice that the assessee had paid FBT on telephone expenses of Rs. 1,90,666/- . It was only after taking into account all these facts namely the fact that only two of the total telephones were installed at the residence of partners and the fact that FBT had been paid on telephone expenses, the assessee revised the disallowance on account of personal use from Rs.2,38,333/- to Rs.61,580/-. In doing so the assessee disallowed 100% of mobile expenses of non-working partners, 25% of mobile expenses of working partners and telephone at the residence of partners. It was submitted that the CIT(A) ignored all these submissions. It was submitted that the CIT(A) could entertain the claim of the assessee even in the absence of a revised return and in this regard our attention was drawn to the following judicial pronouncements:

1. Chicago Pneumatic India Ltd. vs. DCIT (2007) 15 SOT 252 (Mum)
2. CIT vs. Jai Parabolic Springs Ltd., 306 ITR 42(Del).

It was submitted that the computation of disallowance made by the assessee at Rs. 61,580/- is reasonable and should be accepted. The ld. D.R relied on the order of the Assessing Officer.

20. We have considered the rival submissions. We find that the Assessing Officer has made the impugned disallowance purely on the basis of disallowance made by the assessee in its computation of income on account of personal use of telephone. The assessee had in its submissions dated 26/11/2008 and 16/12/2008 given all the details with regard to the revised disallowance of Rs. 61,580/- on account of personal use of telephones. These submissions have been totally disregarded by the Assessing Officer. In our view the CIT(A) should have considered these aspects. The power of the CIT(A) and the appellate authorities are not in any way restricted by the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd., 284 ITR 323 (SC). We find the basis of disallowance made by the assessee at the revised figure of Rs. 61,580/- to be reasonable. We therefore, direct that the addition on account of telephone expenditure on account of personal use should be restricted to Rs. 61,580/- as against Rs.2,38,333/- sustained by the CIT(A). Ground No.1 raised by the assessee is accordingly allowed.

21. Ground No.2 raised by the assessee reads as follows:

“2. Disallowance of Foreign Travel Expenses of Rs. 15,07,611/-

“On the facts and circumstances of the case and in law the lower authorities erred in disallowing the total travel expenses of Rs. 15,07,611/- in respect of foreign travel on the ground that the assessee had not acquired any technology or designs etc. and on the ground that the same were not for business purpose.”

22. The assessee claimed as deduction on account of foreign travelling expenses of Rs. 15,07,611/-. According to the Assessing Officer the assessee was not engaged in export of jewellery and even assessee's sister concern M/s. TBZ Trading Company, which was in export business had not done any export activities in the last few years. The plea of the assessee was that it was undertaking foreign visits to acquire knowledge regarding new trends and designs regarding jewellery. Since the assessee did not give details of designs said to have been noticed during foreign visits or any technology acquired on foreign visits and taking into fact that similar disallowance was made in assess's case in A.Y 2005-06, the Assessing Officer disallowed expenses on foreign travelling. Without prejudice to the above the Assessing Officer also noticed that the foreign visits were undertaken to place like Basel, Zurich, Kuwait , Dubai, London, Detroit , Singapore, Bangkok, New York etc. On certain occasions non working partner Mrs. Bindu Zaveri and her daughter Ms. Rashi Zaveri also accompanied the partner Shri Srikant Zaveri to Dubai. The Assessing Officer was of the view that many trips are having element of personal family trip. He was of the view that the assessee has not been able to give evidence of total stay at a specific location with bills. The Assessing Officer, therefore, disallowed the entire claim for deduction on account of travel expenses. The CIT(A) confirmed the action of the Assessing Officer.

23. Before us Id. Counsel brought to our notice the details of foreign travelling expenses given at page 80,81, & 85 of the paper book. It was also submitted that proper explanation with regard to foreign visits were given before the Assessing Officer. It was also pointed out that in A.Y 2002-03 the Tribunal allowed foreign travelling expenses and in A.Y 2003-04 and 2004-05 travelling expenses were allowed by CIT(A) and no appeal was filed by the Department. In 2005-06 25% of the foreign travelling expenses were disallowed by the Tribunal and in 2007-08 the Assessing Officer himself

restricted the disallowance to 25% of the expenses and so also for A.Y 2008-09, the disallowance was restricted to 25%. It was also highlighted that totally nine trips to foreign countries were undertaken during the previous year, out of which two trips were by Manager of the assessee. Four trips were by managing partners alone and one trip by two managing partners. Only two trips were undertaken by managing as well as non-managing partners.

24. We have considered the submissions and are of the view that following the order of the Tribunal in A.Y 2005-06 and taking into consideration the submissions made by the assessee and with a view to maintain consistency it would be just and fair to disallow 25% of the foreign travelling expenses. We direct accordingly.

25. Ground No.3 was not pressed and the same is dismissed as not pressed.

26. Ground No.4 raised by the assessee reads as follows:

“4. Income from House Property assessed at Rs. 1,54,713/-:

“On the facts and circumstances of the case and in law the lower authorities erred in determining the property income at 10% of the cost of the property at Pune and Rajkot on an adhoc basis in spite of the fact that the assessee had produced municipal ratable value certificate from the authorities in respect of both the properties before CIT(A).”

27. The assessee had a Bungalow in Pune and a Flat at Rajkot and these flats were not used for the purpose of business. The Assessing Officer determined the annual value of these properties under section 22 of the Act by taking 20% of the cost of acquisition of these properties. The property at Pune was acquired for Rs.6,06,126/- in the year 1980 and the flat at Rajkot

was purchased at Rs. 9,41,000/- in A.Y 1998-99. The Assessing Officer estimated the income from house property at Rs. 3,09,426/-.

28. Before CIT(A) the assessee submitted that the Municipal valuation of the Pune property was Rs.9150/- and that of the Rajkot Property as Rs.17,410/- and filed copies of the certificate issued by the local authorities. It was submitted that the annual value should be determined by taking the municipal valuation. The CIT(A) however confirmed the action of the Assessing Officer for the reason that the assessee did not file the evidence regarding municipal valuation before the Assessing Officer. In this regard CIT(A) also held that the assessee had not given any valid reason for filing additional evidence before the CIT(A). The CIT(A) however reduced the annual value to 10% of the cost of the property as against 20% adopted by the Assessing Officer. Still aggrieved the assessee is in appeal before the Tribunal.

29. Before us ld. Counsel for the assessee submitted that the municipal valuation being a public document should have been admitted as additional evidence by the CIT(A). It was further submitted that the Mumbai Tribunal in the case of DCIT vs. Reclamation Realty India Pvt. Ltd., ITA No.1411/M/07 order dated 26/11/2010 has held that Municipal valuation should be the yardstick for determining the annual value where the actual rent received is less than the municipal valuation.

30. We have considered the submissions and are of the view that the additional evidence filed by the assessee should be admitted as evidence. We however, set aside the order of the CIT(A) on this issue and direct the Assessing Officer to consider the claim of the assessee in the light of the additional evidence and the judicial pronouncements on the issue. Ground no.4 is treated as allowed for statistical purposes.

31. In the result, the appeal by the assessee is partly allowed.

32. In the result, the appeal by the revenue is dismissed while appeal by the assessee is partly allowed.

Order pronounced in the open court on the 24th day of June, 2011.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(N.V.VASUDEVAN)
JUDICIAL MEMBER

Mumbai, Dated. 24th June.2011

Copy to: 1. The Assessee 2. The Revenue 3. The CIT City –concerned
4. The CIT(A)- concerned 5. The D.R”H” Bench.

(True copy)

By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.

Vm.

	Details	Date	Initials	Designation
1	Draft dictated on	20/6/11		Sr.PS/PS
2	Draft Placed before author	21/6/11		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			