

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री आर.सी. शर्मा, लेखा सदस्य एवं श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R. C. SHARMA, AM AND SHRI MAHAVIR SINGH, JM

आयकर अपील सं./I.T.A. Nos. 7329 & 7330/Mum/2010

(निर्धारण वर्ष / Assessment Years: 2004-05 & 2005-06)

The Bombay Dyeing & Mfg. Co. Ltd. Neville House, J. N. Heredia Marg, Ballard Estate, Mumbai-400 001	बनाम/ Vs.	Dy. CIT (H.Q.)-2, Aayakar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AA ACT 2328 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Yoghesh A. Thar & Shri Fenil Bhatt
प्रत्यर्थी की ओर से/Respondent by	:	Shri Sanjeev Jain

सुनवाई की तारीख / Date of Hearing	:	28.03.2016
घोषणा की तारीख / Date of Pronouncement	:	07.04.2016

आदेश / ORDER

Per Mahavir Singh, JM:

This is a set of two appeals by assessee are arising out of separate orders of CIT(A)-IV, Mumbai in Appeal Nos. CIT(A)4/DC(HQ)-2/IT-26/06-07 and CIT(A)4/Addl.CIT-2(1)/IT-293/08-09 both dated 28.09.2010. Assessments were framed separately by DCIT, (HQ)-2, Mumbai for AY 2004-05 and Addl. CIT, Range-2(1), Mumbai for AY 2005-06 respectively u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) vide his orders dated 29.12.2006 and 31.12.2008.

2. The first common issue in both the years, i.e., A.Ys. 2004-05 and 2005-06 is as regards to disallowance of provision for expenses amounting to Rs.51,78,904/- and Rs.36,69,434/-. This issue is raised by the assessee in AY 2004-05 vide Grounds 1 to 3, which reads as under:

“1. The Ld. CIT(A) erred in disallowing the provisions made in DMT division of Rs.8,42,477/- on the ground that the assessee has not given details and these expenses pertain to earlier years or subsequent years. He has not appreciated the facts that the assessee is following mercantile system of accounting and has made the provisions on accrual basis and also the provision made at the end of the year gets reversed in next year.

2. The Ld. CIT(A) erred in disallowing the provisions made for water bills of Rs.15,13,564/- on the ground that the assessee has not furnished any supporting evidence in support of its claims. He has not appreciated the fact that the assessee has submitted the payment vouchers in support of its claim of Rs.2,53,924/- and balance provisions was made on the basis of notice issued by the BMC.

3. The Ld. CIT(A) erred in disallowing the provisions for various expenses of Rs.28,22,863/- on the grounds that the assessee has not furnished any supporting evidence in supports of its claim. He has not appreciated the facts that the assessee is following mercantile system of accounting and has made the provisions on accrual basis and also the provision made at the end of the year gets reversed in next year.”

And in AY 2005-06, the assessee has raised following ground no. 2:

“2. The Ld. CIT(A) erred in disallowing the provisions for various expenses of Rs.36,69,434/- on the grounds that the assessee has not furnished any supporting evidence in supports of its claim. He has not appreciated the facts that the assessee is following mercantile system of accounting and has made the provisions on accrual basis and also the provisions made at the end of the year got reversed in next year.”

3. At the outset, the ld. Counsel for the assessee stated that this issue is covered against the assessee by the tribunal's order in assessee's own case for A.Y. 2003-04 in ITA Nos. 2250 and 3193/Mum/2010 dated 11.6.2015, wherein the tribunal vide paras 6 and 7 has dismissed the grounds of assessee as under:

‘6. Ground no.3 relates to a disallowance in the sum of Rs. 31,26,703/-, being the provision for various expenses, effected by the AO for the reason that they were not supported by any evidences. In appeal, the ld. CIT(A) called for a remand report from the AO in view of the additional evidences/materials sought to be relied upon by the assessee, granting deletion where found evidenced and/or supported. The balance disallowance, being confirmed, the assessee is in second appeal.

7. We have heard the parties, and perused the material on record. During the hearing, the ld. AR, the assessee's counsel, conceded to the assessee having no further details/material to support its claim, relying on its written submissions before the authorities below, and towards which reference was made to pages 18 and 19 of the assessee's paper-book. Under the circumstances, we have no hesitation in confirming the impugned disallowance. We may, however, elaborate further. That an expenditure is allowable, where mercantile system of accounting, as in the present case, is adopted, even though no payment has been made, which is claimed to have been during the subsequent year, is undisputed and not in issue. Reference, therefore, to the decision by the apex court in *CIT vs. U.P.State Industrial Development Corporation* [1997] 225 ITR 703 (SC) would be of no moment. The question is of the basis on which it could be said or concluded that expenditure to that extent had in fact accrued, and which we find as wanting. The burden to prove its return, as well as claims preferred thereby, is only on the assessee, and which we find as not discharged to that extent. It may also be clarified here that the assessee had been extended sufficient opportunity to present its case. Needless to add, the assessee is a liberty to make a fresh claim for the subsequent year/s, even as it shall have to be shown by it that expenditure as claimed had arisen for those years, i.e., of payment, each year being independent. We may though clarify that we are not making any observation with regard to the deduction of the said expenditure for those years/s. We decide accordingly, dismissing the assessee's third ground.'

4. The ld. Counsel for the assessee conceded that this issue now stands covered against the assessee. Accordingly, we dismiss this issue of the assessee's appeals in both the years.

5. The next common issue in these two appeals of the assessee, is as regards to the order of CIT(A) in restricting the disallowance u/s. 14A of the Act.

6. At the outset, the ld. Counsel for the assessee stated that these two assessment year are A.Ys. 2004-05 and 2005-06 and Rule 8D is not applicable in these two assessment years in view of the decision of the Hon'ble Bombay High Court in the case of *Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT* [2010] 328 ITR 81 (Bom). The ld. Counsel for the assessee stated that prior to the applicability of Rule 8D of the Rules, the disallowance should be restricted to a reasonable extent, i.e., 1% to 2% in view of the decision of ITAT, Mumbai in the case of *CIT vs. M/s. Godrej Agrovet Ltd* (in ITA No. 934 of 2011, dated 8.1.2013). On query from the Bench, the ld. Sr. (DR) also conceded that of reasonable disallowance on this issue can be made and requested for estimation of

disallowance of 2%. On this, the Id. Counsel for the assessee very fairly agreed for the same. In view of the above concession given by both the parties, we direct the A.O. to recompute the disallowance by estimating at 2% of the exempt income. The A.O. is directed accordingly.

7. The next issue in ITA No. 7329/Mum/2010 is as regards to the order of CIT(A) confirming the disallowance of deduction u/s. 80-HHC of the Act. For this, the assessee has raised following ground no. 4:

“4. The CIT(A) erred in holding that in case there is negative profit as per computation under clause (a), (b) and (c) of sub section (3) of section 80HHC, the appellant would not be entitled to deduction as per proviso of the section.”

8. At the outset, the Id. Counsel for the assessee stated that this issue is covered against the assessee by tribunal's order in the assessee's own case for A.Y. 2003-04 in ITA Nos. 2250 and 3193/Mum/2010, vide para 8 as under:

‘8. Ground 4 concerns the computation of the deduction u/s. 80HHC, and which was, at the very outset, again, admitted by the Id. AR to be squarely covered against the assessee by the decision of the Apex Court in the case of Ipca Laboratories Ltd. v. Dy. CIT [2004] 266 ITR 521 (SC). We, accordingly, direct for computation of deduction u/s. 80HHC in terms of the said decision by the said hon'ble apex court. We decide accordingly.’

In view of the above concession given by the assessee, we dismiss this issue of the assessee's appeal. However, we want to clarify in respect to A.Y. 2004-05, the Id. Counsel for the assessee has further conceded that the CIT(A) has restricted the disallowance to Rs.7 lacs, which should be restricted at the same amount. In view of the above, we are of the view that once CIT(A) has restricted of disallowance at Rs.7 lacs, the same should be taken. Hence, we order accordingly.

9. The next common issue in these two appeals of the assessee is against the order of CIT(A), confirming the disallowance of expenses for earning exempt income u/s. 14A while computing income u/s. 115JB of the Act. For this, the assessee has raised following ground nos. 6 and 7 in A.Y. 2004-05 and ground nos. 3 and 4 in A.Y. 2005-06.

“AY : 2004-05:

6. The CIT(A) erred in disallowing a sum of Rs.79,60,000/- u/s. 14A without looking into the fact that he himself has given the relief under normal and restricted the disallowance to the extent of Rs.7,00,000/- but he erred in giving relief under MAT.

7. The CIT(A) erred in disallowing notional expenditure u/s. 14A while computing book profit u/s. 115JB.”

“AY: 2005-06:

3. The CIT(A) erred in disallowing a sum of Rs.44,04,750/- u/s. 14A without looking into the fact that he himself has considered the reasonableness and restricted the disallowance to the extent of 1% of exempt income in earlier year on reasonable basis.

4. The CIT(A) erred in disallowing notional expenditure u/s. 14A while computing book profit u/s. 115JB.”

10. At the outset, the Id. Counsel for the assessee stated that the additions to be restricted to the amount disallowed u/s. 14A of the Act by CIT(A) in the normal provisions because the Rule 8D of the Income Tax Rules will not apply in these two assessment years. In view of the above, we are of the view that the disallowance should be restricted to the extent amount already disallowed u/s. 14A of the Act and not exceeding the same. We order accordingly.

11. The next issue in ITA No. 7329/Mum/2010 for the A.Y. 2004-05 is as regards to the order of CIT(A) confirming the disallowance of deduction of eligible profits u/s. 80-HHC of the Act while computing income u/s. 115JB of the Act. For this, the assessee has raised following ground no. 8:

“8. The CIT(A) erred in holding that the appellant is not entitled to deduction u/s. 80HHC. As a result, the deduction u/s. 80HHC should not be reduced while computing book profit u/s. 115JB of the Income Tax Act, 1961.”

12. At the outset, the Id. Counsel for the assessee drew our attention to tribunal's order in the assessee's own case for A.Y. 2003-04 and in ITA No. 2250 and 3193/Mum/2010, vide para 9, wherein the issue is set aside to the file of the A.O. by observing as under:

‘9. The fifth and last ground of the assessee's appeal concerns the computation of book profit u/s. 115JB of the Act inasmuch as the assessee claims for the deduction u/s. 80HHC to be reduced in computing the book profit there-

under. The matter in our view stands squarely covered by the decision by the Apex Court in the case of CIT vs. Ajanta Pharma Ltd. [2010] 327 ITR 305 (SC). We, accordingly, set-aside the matter back to the file of the AO for working the book profit u/s. 115JB in terms of the said decision. We decide accordingly.'

In view of the above, the Id. Counsel for the assessee stated that the issue here also needs to be re-examined at the level of the A.O. On query from the Bench, the Id. Sr. DR has not objected to setting aside of this issue to the file of the A.O. In view of the above, we restore this issue to the file of the A.O. in term of the Tribunal's decision in A.Y. 2003-04. This issue is allowed for statistical purpose.

13. The next common issue in these two appeals of the assessee is raised by way of additional ground in both the years regarding disallowance of provision of expenses in earlier years, but now reversed should not be taxed amounting to Rs.31,26,703/- in A.Y. 2004-05 and provision of expenses for DMT amounting to Rs.8,42,477/-, provision for water bill amounting to Rs.15,13,564/- and provision for various expenses amounting to Rs.28,22,863/- in A.Y. 2005-06. The Id. Counsel for the assessee stated that these expenses are already taxed as provision for expenses and now these are reversed it should not be taxed. On query from the Bench, the Id. Sr. DR stated that the issue can be remitted back to the file of the A.O. for verification of the fact, whether the provision for expenses have been taxed in earlier year or not. Let the assessee produce these evidences, whether these provisions for expenses have been taxed in earlier year or not. On this, the Id. Counsel for the assessee fairly conceded that he has no objection if the issue is remitted back to the file of the A.O. for verification purpose. In terms of the above, we are of the view that once the disallowance of provision of expenses is made in earlier year, the same now reversed should not be taxed. The Id. Counsel to showed his *bona fide* and drew our attention to para 6 of the tribunal's order for A.Y. 2003-04 in ITA No. 2250/Mum/2010, wherein ground

no. 3 relating to disallowance of provisions for various expenses amounting to Rs.31,26,703/- have been taxed by filing findings against para 6:

'6. Ground no.3 relates to a disallowance in the sum of Rs. 31,26,703/-, being the provision for various expenses, effected by the AO for the reason that they were not supported by any evidences. In appeal, the ld. CIT(A) called for a remand report from the AO in view of the additional evidences/materials sought to be relied upon by the assessee, granting deletion where found evidenced and/or supported. The balance disallowance, being confirmed, the assessee is in second appeal.'

In such situation, we direct the A.O. to verify the fact of taxation of this provision of expenses in earlier year. In case these provisions in expenses have taxed in earlier years, the same when reversed should not be taxed. We direct the A.O. accordingly.

14. In the result, the assessee's appeals are partly allowed for statistical purposes.

Order pronounced in the open court on April 07th, 2016

Sd/-
(R. C. Sharma)

Sd/-
(Mahavir Singh)

लेखा सदस्य / Accountant Member

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.04.2016

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,