IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

Before Shri Shailendra Kumar Yadav, Judicial Member,
and Shri G.S.Pannu, Accountant Member.

ITA.No.975 & 976/PN/2011
(Asstt. Year : 2004-05 & 2005-06)

DCIT, Central Circle-1(2), Pune	..	Appellant
Vs.		
Venky's (India) Ltd., 153-C, Mittal Towers, Nariman Point, Mumbai – 400021. PAN: AAACW1300L	..	Respondent

Assessee by	:	Shri Nikhil Pathak
Department by	:	Shri S.K.Singh
Date of Hearing	:	18.01.2013
Date of Pronouncement	:	23.01.2013

ORDER

PER SHAILENDRA KUMAR YADAV, JM:

Both these appeals pertain to the same assessee for A.Ys. 2004-05 and 2005-06. So they are being disposed of by this common order for the sake of convenience.

ITA.No.975/PN/2011 – A.Y. 2004-05

2. The Revenue has raised the following grounds:

1. Whether on the facts and in the circumstances of the case Ld.CIT(A) was justified in restricting disallowance u/s.14A of the IT Act to Rs.1,00,000/- out of disallowance of Rs.23,95,391/- made by the AO in the Assessment Order.

   i. Whether on the facts and in the case of the Ld. CIT(A) was justified in deleting disallowance of Rs.3,92,391/- made by Assessing Officer u/s 14A towards administrative expenses.

ii. Whether on the facts in the circumstances of the case Ld.CIT(A) was justified in restricting disallowance of Rs.20,03,000/- made by Assessing Officer u/s 14A towards borrowed cost, to an amount of Rs.1,00,000/- on an ad hoc basis.

2. Whether on the facts and in the circumstances of the case, Ld.CIT(A) was justified in directing the AO to work out deduction u/s.80HHC in respect of entire business profits without reducing the deduction allowed u/s.80IB of Rs.2,28,68,682/-.

3. The first ground is with regard to disallowance u/s.14A of the Act. The Assessing Officer has made disallowance u/s.14A of Rs.23,95,391/-. The assessee went in appeal and submitted that it has earned dividend income of Rs.78,47,814/- from the investment in mutual funds and accordingly claimed the same as exempt u/s.10(34) of the Act. The Assessing Officer has disallowed an adhoc sum of Rs.20,03,000/- out of interest paid and Rs.3,92,391/- out of the other expenses u/s.14A. The assessee made various contentions to oppose the disallowance in question before the CIT(A) who having considered the facts and circumstances, restricted the disallowance of the interest u/s.14A to an adhoc amount of Rs.1,00,000/- on the reasoning that the interest to the above extent out of Rs.1,28,476/- paid on cash credit account could be attributed to tax free dividend received on mutual funds. This reasoned finding of the CIT(A) needs no interference from our side. We uphold the same.

4. The next issue is with regard to deduction u/s.80HHC. The Assessing Officer treated interest income of Rs.3,29,689/- as business income and he further made adjustment to business profit of Rs.2,28,68,682/- towards the deduction allowed u/s.80IB of the Act. In appeal, the CIT(A) observed that total deduction claimed by the assessee company u/s.80HHC and 80IB are far lesser from the profit of the business. In view of the decision of the Hon'ble jurisdictional Bombay High Court in the case of Associated Capsules Ltd. vs. DCIT (2011) 197 Taxman 84 (Bom.), the claim of

the assessee company that deduction allowed u/s.80IB should not be reduced while computing profits of business eligible for deduction u/s.80HHC was held correct. Thus in the light of jurisdictional High Court in the case of Associated Capsules Ltd. (supra) wherein it has been held that deduction allowed u/s.80IB should not be reduced while computing profit of business eligible for deduction u/s/80HHC, the order of the CIT(A) needs no interference from our side. Accordingly same is upheld.

5. As a result, the appeal filed by the Revenue is dismissed.

ITA.No.976/PN/2011 – A.Y. 2005-06

6. This appeal has been filed by the Revenue against the order of the CIT(A) wherein restriction of the disallowance u/s.14A to Rs.2,00,000/- out of disallowance of Rs.44,70,000/- made by the Assessing Officer has been opposed. Similar issue arose in the A.Y. 2004-05 in assessee's own case which has been decided in favour of the assessee vide para 3 of this order. So following the same reasoning, we are not inclined to interfere with the finding of the CIT(A) who has restricted the disallowance u/s.14A to Rs.2,00,000/- out of Rs.44,70,000/- made by the Assessing Officer. Same is upheld. As a result, appeal filed by the Revenue is dismissed.

7. In the result, both the appeals filed by the Revenue are dismissed.

Pronounced in the open court on this the 23rd day of January, 2013.

Sd/-	Sd/-
(G.S.PANNU)	(SHAILENDRA KUMAR YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

gsps

Pune, dated the 23rd January, 2013

Copy of the order is forwarded to:

1. The Assessee
2. The DCIT, Central Circle-1(2), Pune.
3. The CIT(A)-Central, Pune.
4. The CIT (Central), Pune.
5. The DR “B” Bench, Pune.
6. Guard File.

By Order

Private Secretary,
Income Tax Appellate Tribunal,
Pune.