

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

Sl. No.	IT(TP)A No.	Asst. Year	Appellant	Respondent
1.	268/Bang/2012	2005-06	M/s.Sigma Aldrich Chemicals Pvt. Ltd. Plot No.12, Bommasandra, Jigani Link Road, Bangalore-560100.	Addl.CIT, Range-12, Bangalore.
2.	269/Bang/2012	2006-07	-do-	Dy.CIT, Circle 12(3), Bangalore.
3.	1433/Bang/2013	2007-08	-do-	Asst.CIT, Circle 12(3), Bangalore.
4.	1434/Bang/2013	2008-09	-do-	-do-
5.	387/Bang/2012	2005-06	Asst. CIT, Circle 12(3), Bangalore.	M/s.Sigma Aldrich Chemicals Pvt. Ltd. Bangalore.
6.	388/Bang/2012	2006-07	-do-	-do-
7.	1416/Bang/2013	2007-08	Dy.CIT, Circle 12(3), Bangalore.	-do-
8.	1399/Bang/2013	2008-09	-do-	-do-

Assessee by: Shri K.R.Vasudevan, Advocate.
Revenue by: Dr. P.K.Srihari, Addl.CIT

Date of hearing : 13/07/2015.
Date of pronouncement: 24/07/2015.

O R D E R

Per Smt. P. MADHAVI DEVI, JM:

All these are cross appeals both by the assessee as well as the revenue against the respective orders of the CIT(A)-III, Bangalore, for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09.

2. Brief facts of the case are that the assessee-company which was incorporated in the year 2003 is a wholly owned subsidiary of Sigma

Page 2 of 33

Aldrich Foreign Holdings Co. Inc, having its registered office and has also trading unit at Bangalore. The assessee is engaged in the manufacture and trading of chemicals and distribution of a broad range of bio-chemicals, organic and inorganic chemicals, radio-labelled chemicals, diagnostic reagents, chromatography products, laboratory chemicals and related products. The assessee-company filed its return of income for the assessment year 2005-06 declaring an income of Rs.8,18,54,315/- on 28/10/2005. During the assessment proceedings u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] Assessing Officer (AO) called for various details and the assessee produced such details which include books of account, bills and vouchers and bank statements etc. AO also visited the premises of the assessee-company on 29/05/2008 and the statement of one of the directors of the company i.e. Ms.Vanja Krishnan, was recorded on oath u/s 131 of the Act on 29/05/2008 and 5/6/2008. On perusal of the profit and loss account, AO observed that the assessee had disclosed a total turnover of 78,10,85,435/- on which the assessee has shown net profit of Rs.6,87,47,804/- and gross profit of Rs.19,87,28,822/-. He accordingly worked out the net profit at 8.8% and GP rate at 25.44%. He observed that in the immediately preceding year, net profit rate of the assessee-company was 8.97% and therefore there was a marginal fall of 0.17% in the net profit rate for the current assessment year. The AO, therefore, scrutinized various claims made by the assessee and made various disallowances

and consequential additions to the returned income of the assessee and brought them to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) who granted partial relief to the assessee. Against the confirmation of the additions by the CIT(A), assessee is in appeal before us while against the deletion by the CIT(A) of additions made by the AO, revenue is in appeal before us.

4. We shall now proceed with each of the additions confirmed by the CIT(A) for the assessment year 2005-06:

I. Short-landing:

The assessee had claimed an amount of Rs.3,81,583/- on account of short-landing i.e. short receipt of goods. It is stated by the assessee that the assessee sources goods from its group company located overseas and while receiving these goods, there is shortage of goods in weight physically received and such shortage is claimed as business expenditure by the assessee. It was further stated that as a matter of policy, in respect of amounts less than USD 2500, no credit/debit note is issued. The AO disallowed the same holding that the assessee has not given any basis for such claim. Further considering the statement of the director, the AO held that the assessee had unnecessarily claimed this amount in the books of account, but that the assessee should have recovered this amount from its principal companies which supplied the goods to it short either through raising debit notes or reducing the bills amount. He further

Page 4 of 33

held that this claim of the assessee is not genuine. He, accordingly, disallowed the entire amount and added it back to the assessee's returned income. The CIT(A) confirmed this addition.

(ii) The learned counsel for the assessee submitted that the common or normal practice in the industry in which the assessee operates is to write off loss of goods as the shortage of receipt is not significant when compared to overall business of the assessee. It was submitted that due to shipment of goods from overseas, certain loss is incurred and since its value was very small when considered individually,, such value has been charged off. He reiterated the contention that the assessee has a global policy not to issue credit memo for amounts less than USD 2500 (approximately INR Rs.150,000/-). It is submitted that also from the cost benefit perspective, the cost entailing processing of the credit or debit notes would be higher than the cost recovered. He, therefore, prayed that the disallowance of the sums written off by the assessee towards shortage in receipt of goods be deleted.

(iii) The learned Departmental Representative, on the other hand, supported the orders of the AO as well as the CIT(A) and submitted that the shortage of goods should have been claimed by the assessee from the principal suppliers and should not have written off the same as expenditure.

(iv) At the time of hearing, the learned counsel for the assessee has filed Notes on arguments and also a chart showing the summary of

Page 5 of 33

ratios of the disallowances made by the AO to the sales and cost of goods traded by the assessee. Upon perusal of the material on record and in the light of averments of both the parties, we find that during the relevant financial year, the short-landing is only 0.05% on sales and 0.07% of the cost of goods sold by the assessee. It is also worth mentioning that the loss is not pertaining to a single item but is the total of many items imported by the assessee. In the case of shipment, it cannot be disputed that there is a possibility of wastage in quantity due to various factors such as leakage, drying up, evaporation etc., particularly since the goods imported are chemicals. In such a scenario, wastage in transit appears to be common and loss of such shortage of goods delivered to the assessee particularly when it is negligible has to be allowed as expenditure to the assessee. We appreciate the contention of the assessee that raising debit or credit note on small amounts might be more costly than setting off the above shortage. Further, it is to be left to the wisdom of the businessman as to the method he wants to adopt to make a transaction cost-effective. Therefore, we are of the opinion that the claim of the assessee of short-landing particularly because it is negligible as compared to its sales and cost of goods sold, has to be allowed. This ground of appeal is accordingly allowed.

II. Error in preparation of goods receipt and physical difference:

As regards this issue, the assessee had claimed an amount of Rs.96,444/- on account of error in preparation of goods receipt and Rs.4,91,533/- on account of physical difference of goods received. During the assessment proceedings, the assessee had explained as under:

"The warehouse operations have been outsourced to an external service provider. There are times when there is turnover in the people handling the process which results in training issues and knowledge transfer issues. As a result of this there are some errors in accounting the goods receipt. This is a rectification entry for the same. During the year there are only about 10 cases where the error has occurred."

"We ship approximately 21,000 bottles every month, which is an average of 1000 bottles each day. Due to customer need for faster deliveries, our warehouse personnel are hard pressed to ship products as soon as possible. Furthermore, the warehouse functions are outsourced to a service provider. Due to the nature of functions in the warehouse, the staffs manning those functions are not highly educated. Though we have a 2 level check, still they do make errors in shipping some products extra to a customer. Very few customers inform us if they receive excess products. This leads to a physical shortage versus system stocks. This is found out during our inventory cycle counts. At this stage, there is no other recourse except to write off the inventory from the system. "

The AO, however, did not agree with the assessee and held that the assessee should have claimed this loss from the warehouse operations service provider i.e. Ondolex Corporation and they should be asked to pay for it. He accordingly disallowed the same and brought it to tax.

Page 7 of 33

(ii) Aggrieved, the assessee preferred an appeal before the CIT(A) who upheld the disallowance and the assessee is in appeal before us.

(ii) The learned counsel for the assessee submitted that the assessee has written off the expenses under the head 'error in preparation of goods receipt' as a rectification entry on account of documentation error in accounting of goods received. Further it was submitted that the value of the difference in physical stock in the inventory determined during the physical inventory verification was also written off as such difference was due to oversight of certain floor workers in shipment of certain items. He submitted that the discrepancies in the stocks was on account of outsourcing of its warehouse operations to an external service provider and due to huge turnover of the assessee, people handling the process who lacked proper training and knowledge, have erred in accounting the goods received or in shipping of certain items sold by the assessee. He, therefore, submitted that these errors are unintentional and was wholly and exclusively associated with the business of the assessee and is an allowable expenditure u/s 37(1) of the Act. As regards the difference in the physical stock, he submitted that the assessee ships approximately 21,000 bottles every month which is an average of 1000 bottles each day and due to the customers need and demand for faster deliveries, the warehouse personnel are hard-pressed to ship products as soon as possible due to which some extra shipping may have been made by these personnel resulting in difference. He further

Page 8 of 33

submitted that the percentage of error in preparation of goods received as well as physical stock is 0.01% and 0.025% on sales and cost of goods respectively. In support of his contention that such difference should be allowed as business expenditure. He relied upon the following decisions:

- i) *Boston Scientific International BV India vs. ADIT* (2010) 40 SOT 11(Mum.Tri.),
- ii) *CIT vs. Wolkem India Ltd.* (2009) 315 ITR 211 (Raj.),
- iii) *CIT vs. Hotline Teletube & Components Ltd.* (2008) 175 Taxman 286 (Delhi),
- iv) *Emersons Process Management India P.Ltd. vs. Addl.CIT* (2011) 47 SOT 157 (Mum.Tri.)
- v) *Alfa Laval India Ltd. vs. DCIT* (2003) 133 Taxman 740 (Bom.)

(iii) The learned Departmental Representative, on the other hand, submitted that the AO has clearly brought out in the assessment order that the difference in stock claimed by the assessee was not acceptable at all and therefore the loss on account of such shortage cannot be and should not be allowed.

(iv) Having regard to the rival contentions and the material on record, we find that the main reason for disallowance of these items is not due to any doubt about the genuineness of the claim of the assessee but on the ground that the difference is due to the error committed by the warehouse personnel and that the assessee should have claimed the loss from such contractor and further that it is not

Page 9 of 33

the expenditure of the assessee. In our opinion, as long as the loss is arising out of the business operations of the assessee and the genuineness of the same is not doubted by the AO, it is immaterial as to whether the loss is arising out of error committed by the external service provider or the assessee, it is the loss of the assessee and it can be claimed by the assessee. Further this view is in consonance with the decisions relied upon by the assessee (cited supra). The argument of the assessee that write off of negligible amount of loss on account of above error is cost effective as compared to claims to be made against the third party and the costs involved in processing such claims finds favour with us particularly since loss on account of these two items is only 0.01% and 0.02% on sales and cost of goods respectively. Therefore, we allow this ground of the assessee.

III. Breakage:

The assessee had claimed an amount of Rs.5,67,832/- under the head 'breakage' and on query by the AO, assessee explained as under:

"Most of the products dealt by Sigma are packed in Glass bottles. Although due care is taken at the time of packing of the materials, due to the inherent characteristic of the packing materials and since the materials are handled physically at various points like the airports, other transport areas, warehouses, etc., there is bound to be breakage of these materials. This results in the erosion of the commercial value of the products. Hence, the same is scrapped at the premises."

The AO agreed with the assessee that breakage cannot be ruled out in the business of the assessee but held that since the assessee has employed professional agencies for handling, transportation and warehouse management, assessee should have recovered from them.

Page 10 of 33

The AO disallowed 50% of the claim of the assessee and made an addition of Rs.2,83,916/-.

(ii) Aggrieved, the assessee preferred an appeal before the CIT(A) who granted partial relief by restricting the disallowance to Rs.1,50,000/-. Aggrieved, the assessee is in appeal before us.

(iii) The learned counsel for the assessee submitted that although due care is taken at the time of packing of material, due to the inherent characteristics of the packing materials and since the materials are handled physically at various points like the airports, other transport areas, warehouses, etc., there is bound to be breakage of these materials and this results in erosion of commercial value of the product and therefore the same is scrapped at the premises. The learned counsel for the assessee further drew our attention to the fact that the CIT(A) has granted full relief to the assessee for assessment year 2006-07 and partial relief for the assessment year 2005-06 and 2007-08. He submitted that such method of valuation of stock is being consistently followed by the assessee and since the loss towards breakage is on account of business activity of the assessee, it is allowable as business expenditure.

The learned Departmental Representative, however, supported the orders of the authorities below.

(iv) Having regard to the rival contentions and the material on record, we find that the genuineness of loss towards breakage of glass bottles containing chemicals is not doubted by the AO. The only

Page 11 of 33

reason for making disallowance is that handling of these bottles is by a professional agency and therefore the loss should also have been claimed from them because the assessee is making payment to the professional agency towards these services. On going through the chart filed by the learned counsel for the assessee showing the ratio of the loss on such breakage to sales, we find that loss on account of breakage is 0.07% of the sales during the relevant assessment year which is negligible as compared to the huge turnover of the assessee. The assessee is making payment to the professional agency for the services rendered by them but the breakage is not attributable to the employees of the professional alone. In such a situation, we do not agree with the observation of the AO that the assessee should have claimed the loss from the professional agency only. As long as the loss is on account of business activity carried on by the assessee, it cannot be disallowed. Therefore, the ground of appeal relating to this issue is allowed.

IV. Management fee paid to Sigma Aldrich USA:

The assessee has claimed an amount of Rs.21,28,791/- as paid to Sigma Aldrich USA towards management fee as business expenditure. The assessee gives the following explanation justifying such expenditure:

"During the year an amount of Rs.21,28,791/- has been accounted as management fees paid to Sigma Aldrich Inc. USA. The management fees is primarily towards the cost of time spent by people in marketing, publishing, graphics and catalog printing department towards various marketing support activities like product catalog/brochure designing and printing, competition analysis etc."

Page 12 of 33

The AO disallowed the same holding that the assessee had already paid an amount of Rs.31.42 lacs to Sigma Aldrich, Germany and Rs.32.81 lacs to Sigma Aldrich, USA towards cost of catalogues etc., and further that there is nothing on record to suggest that any management services were rendered by Sigma Aldrich, Germany or USA to the assessee-company. He accordingly brought it to tax.

(ii) On appeal, the CIT(A) held that the transaction is an international transaction and that determination of the ALP was referred to the TPO and the TPO has not found the payments to be unreasonable and in fact observed that no adjustment was necessary u/s 92CA of the Act. Taking this fact into consideration, the CIT(A) held that the payment is reasonable. However, he held that since the payment in question is for technical or consultancy services which are made available to the assessee, provisions of sec. 40(a)(ia) are attracted. He observed that management fee is claimed to have been paid towards cost of time spent by persons in USA in marketing, publishing, graphics and catalogue printing and for marketing support analysis and activities which amounts to making available the technical know-how as per DTAA between India and USA. He therefore held that TDS ought to have been made on this amount and accordingly the provisions of sec. 40(a)(ia) are applicable. Aggrieved, the assessee is in appeal before us.

(iii) The learned counsel for the assessee submitted that payment made to Sigma Aldrich, USA is primarily towards cost of time spent by Sigma Aldrich, USA personnel in marketing, publishing,

Page 13 of 33

graphics and catalogue printing on behalf of the assessee and there is no technical know-how or knowledge which is made available to the assessee in this regard. He further submitted that the term 'make available' is not defined under the India-USA DTAA and further the memorandum of understanding appended to the India-USA DTAA explains that unless the technology can be utilized by the recipient without recourse to the service provider, the services cannot be termed as fees for included services. He relied upon the following decisions in support of this contention:

- i. *Raymond Ltd. vs. DCIT* (2003) 86 ITD 791(Mum) and
- ii. *Intertek Testing Services India P.Ltd. In re* (2008) 175 Taxman 375 (AAR – New Delhi)

The learned Departmental Representative, on the other hand supported the orders of the CIT(A).

(iv) Having regard to the rival contentions and the material on record, we find that the CIT(A) has observed that the assessee had made similar payment in the earlier assessment year i.e. 2004-05 under the head 'legal and professional charges' but for the assessment year 2005-06, the assessee has claimed it as 'management fee'. Therefore, according to the CIT(A), the nomenclature given in the earlier assessment year indicated that technical knowledge was made available to the assessee. He also observed that in the very next year these companies are stated to have been paid for brochures, printing materials etc., which services are easily available at reasonable price with international quality within the country. Therefore, the CIT(A)

Page 14 of 33

has held that it is 'made available' of technical knowledge to the assessee and that the provisions of 40(a)(ia) are applicable. As the payment of management fee to its AEs was referred to the TPO for determination of ALP and the TPO has accepted the reasonableness of the payment, we find that the order of the AO holding that there is no evidence that management services were rendered by Sigma Aldrich, Germany or Sigma Aldrich, USA to the assessee-company is not sustainable. However, as regards the finding of the CIT(A) that the AEs have made available technical knowledge to the assessee is without any basis. Neither the AO nor the CIT(A) has brought out any details of the services rendered by the AEs to the assessee and as to how the knowledge is made available to the assessee to bring it within the provisions of section 40(a)(ia) of the Act for non-deduction of tax at source. For coming to the conclusion that the knowledge is made available to the assessee, the nature of the transaction has to be looked into. Merely holding that the work of catalogue printing, brochures etc., is not a highly specialized one and is available within the country, cannot be said to be a specialized activity requiring making available of the technology to the assessee. Therefore, we deem it fit and proper to remit this issue to the file of the AO for re-examination of the nature of the transaction and only if it falls within the definition of 'technical and consultancy services' under the India-USA DTAA, the provisions of sec. 40(a)(ia) can be applied. In view of the same, this ground of appeal is treated as allowed for statistical purposes.

V. Staff Welfare:

The assessee had claimed a sum of Rs.14,33,180/- under the head 'staff welfare expenses'. The assessee furnished the following details before the AO:

<i>Particulars</i>	<i>Amount (Rs.)</i>
Gifts to employees	5159
Insurance premium for employees	557758
Pantry expenses at office	191849
Training and seminars	678414
Total	14,33,180

However, the assessee failed to furnish bills and vouchers in respect of this expenditure except in respect of expenditure on insurance and some communication in respect of training of the employees. The AO, therefore, disallowed 35% of the same and added it to the total income of the assessee. On appeal, the CIT(A) restricted the disallowance to 15% and against confirmation of the part disallowance, the assessee is in appeal before us.

We find that the assessee has not furnished bills and vouchers in support of its claim. The burden is on the assessee to furnish the necessary details in support of the claim of expenses made by it. In the absence of such details, the AO has made disallowance which has been restricted to 15% by the CIT(A). We do not see any reason to interfere with the order of the CIT(A) on this issue. This ground of appeal is therefore rejected.

VI. Travelling expenses:

The assessee has claimed a sum of Rs.50,89,575/- as reimbursement by the assessee-company to its holding company Sigma Aldrich, USA towards expenses of its employees and directors. The AO observed that the assessee has failed to furnish supporting bills and vouchers in respect of this expenditure and also that the same has been incurred towards travelling expenses of the visitors. Therefore, the AO disallowed 20% of the claim and added it back to the total income of the assessee.

(ii) The assessee filed an appeal before the CIT(A) stating that the expenditure under this head is primarily incurred for travelling of personnel to India for supporting SAP implementation for selective overseas projects for various technical discussions and project implementation plan of the New India Laboratory Project. It was also clarified that the assessee had submitted all the supporting bills and vouchers with the AO but the AO has not considered the same. The CIT(A) however was not convinced with the assessee's contention and confirmed the addition made by the AO and the assessee is in second appeal before us.

(iii) On perusal of the material on record we find that the CIT(A) on perusal of the evidence filed by the assessee has observed that several of these are invoices drawn by Wipro towards 'SAP Functional Consultancy Charges' rather than involving travel per se. He also observed that both the invoicing and invoiced parties are addressed at Bangalore and therefore they do not support the assessee's contention

Page 17 of 33

of having provided full and complete details of travel before the AO. The learned counsel for the assessee has not produced before us any other supporting evidence other than that filed before the AO and the CIT(A) to rebut the above finding of the CIT(A). Therefore, we do not see any reason to interfere with the order of the CIT(A) on this issue. This ground of appeal therefore is rejected.

(iv) In the result, the assessee's appeal is partly allowed.

5. For the very same assessment year, the revenue has filed an appeal against the reliefs given by the CIT(A) by deleting the additions made by the AO on the following counts:

I. SAP costs:

The assessee-company had paid an amount of Rs.1,25,46,254/- to Sigma Aldrich Germany towards ERP implementation cost and also a sum of Rs.5,23,930/- to Sigma Aldrich USA towards ERP implementation cost. On inquiry by the AO, the assessee has submitted the following reply:

"SAP Cost:

<i>Name of Party</i>	<i>Reason for expenditure</i>
<i>Amount (Rs.)</i>	
<i>Sigma Aldrich-Chemie GMBH, Germany (SAP)</i>	<i>ERP Implementation cost</i>
<i>Rs.12,546,254/-</i>	

Benefits of SAP

To facilitate its customers situated at different parts of the world, Sigma-USA and Sigma-Germany have implemented SAP, an Enterprise Resource Planning Software in their company for which they incur various expenses such as Software cost of SAP, license fees to SAP for each user and maintenance of the SAP system.

Page 18 of 33

Sigma USA and Sigma Germany have been licensed to use the ERP software developed by SAP and they in turn have sub licensed i.e. authorized the group companies to use the same.

The actual creator of this software is SAP America, Inc,3999 West Chester Pike, Newtown Square, PA 19073, USA: and Sigma USA and Sigma Germany have been licensed by them to use the same.

Reasons for treatment of SAP costs as revenue expenditure

Sigma-USA and Sigma-Germany incurs various expenses including per user license fees to SAP, for maintaining the SAP system, used throughout the world by its customers. On periodical basis, Sigma-SUA and Sigma-Germany cross-change the expenses incurred in relation to above to its customers. The amount for 'information Services' is charged to each customer on the basis of usage of SAP and amount for "IT" Services' is charged as share of license fees paid for SAP. In view of the same, Sigma-USA and Sigma-Germany have charged Sigma-India its share of expenses on the above basis. Since these expenses are recurring in nature, it is treated as revenue expenses."

The AO held that this amount has been debited by Sigma USA & Sigma Germany to the account of the assessee towards assessee's share in respect of IT services and license fee etc. and further the SAP-ERP package of module was brought and installed by the assessee-company in the year 2003 at the inception of the company and huge amount of about Rs.3 crores was incurred on such installation. He observed that this amount has apparently been paid on the basis of debit note raised by SAP, Germany and it is not clear as to how this amount has been worked out. Further he held that during the course of inspection on 29/5/2009 he found that ERP package was not working very smoothly and it was taking considerable time in generating simple reports etc. Therefore, he disallowed 50% of the same and brought it to tax.

Page 19 of 33

(ii) Aggrieved, the assessee preferred an appeal before the CIT(A) who granted relief to the assessee and the revenue is in appeal before us.

(iii) The learned Departmental Representative, supported the order of the AO while the learned counsel for the assessee relied upon the order of the CIT(A).

(iv) We find that genuineness of the payment made by the assessee is not doubted by the AO nor is the purpose of the program being for assessee's business is doubted by the AO. As long as the expenditure is for the purpose of business, the same cannot be disallowed. As rightly pointed out by the CIT(A), questioning the speed or validity of the SAP system for the assessee's business for purpose of disallowance of expenditure is beyond the scope of the AO unless he points to specific reasons to hold that the system is not used for business of the assessee. Therefore, we do not see any reason to interfere with the order of the CIT(A) on this issue and the revenue's ground is therefore rejected.

II. Payment to M/s Indelox:

The assessee had claimed payment of Rs.1,13,84,956/- towards logistic services, warehouse management and customs clearances provided by M/s.Indelox Services Pvt. Ltd. The AO examined the rates as per the agreement and noted that during the course of inspection of the premises on 29/5/2008, no staff from the contractor was found in the premises. On a query from the AO, assessee submitted that

Page 20 of 33

M/s.Indelox was engaged by the assessee to provide services such as warehouse management which includes receipting of goods, storage of materials to respective locations, creating customs documentation for bonding and de-bonding, creating deliveries and invoices, picking and packing of materials for dispatch etc. It was submitted that on the day of the visit, since the visit to the warehouse was at 6 PM, most of warehouse staff and pick pack personnel had left for the day and there were only few people in the documentation section who were involved in the customs documentation process section which was involved in the customs documentation process. Therefore, the assessee justified payment to M/s.Indelox Services. The AO was however not convinced with the assessee's explanation and expressed doubts about the quality of the contractors and particularly in view of the fact that no employees were present during the time of inspection he held that payment of such huge sum to the contractor is not justified. He, therefore, disallowed a sum of Rs.20 lakhs out of the total payment to M/s.Indelox.

(ii) On appeal, the CIT(A) granted relief to the assessee by holding that the expenditure is towards business activity of the assessee and an ad hoc disallowance of the same is not proper. Aggrieved, the revenue is in appeal before us. The learned Departmental Representative supported the order of the AO while the learned counsel for the assessee supported the order of the CIT(A) and also placed reliance upon the following decisions:

- i) *Alfa Laval India Ltd. vs. DCIT* (2003) 133 Taxman 740 (Bom.) affirmed by Hon'ble Supreme Court in (2008) 295 ITR 45 (SC),
- ii) *Oil and Natural Gas Commission vs. ACIT* (1999) 69 ITD 69 (Del Trib.),
- iii) *ACIT vs. Arthur Anderson & Co.* (5 SOT 393)(Mum Trib.) and
- iv) *Sonic Biochem Extractions P. Ltd. vs. ITO* (2013) 35 Taxmann.com 463 (Mum Trib.)

(iii) On examination of the material on record, we find that genuineness of the services rendered by M/s.Indelox is not doubted by the AO. The only ground on which the AO has disallowed is that at the time of inspection, very few of the employees of the contractor were present at the premises. The contention of the assessee that the time of inspection was 6 PM is not rebutted by the department. Such being the time of inspection, explanation of the assessee that the employees of the contractor have already left for the day is not unacceptable. Since the expenditure is for the business purpose of the assessee, an ad hoc disallowance of the same is not justified as held by various High Courts in the cases relied upon by the assessee (cited supra). We, therefore, agree with the findings of the CIT(A) and we see no reason to interfere with the same. The ground of appeal of the revenue is rejected.

(iv) In the result, the revenue's appeal (IT(TP)A No.387/Bang/2012) is dismissed.

IT(TP)A No. 269/Bang/2012:

6. This appeal by the assessee is for the assessment year 2006-07.

I. Shortage of receipt of goods: The assessee has claimed a sum of Rs.12,51,672/- towards shortage in receipt of goods and the AO disallowed the same which has been confirmed by the CIT(A). As seen from the chart filed by the assessee, this shortage in receipt of goods is 0.12% of sales and 0.17% of cost of goods sold which is very negligible amount. For the detailed reasons given for the assessment year 2005-06, we allow the ground of appeal of the assessee on this count.

II. Physical difference: The assessee had claimed a sum of Rs.58,65,085/- which was disallowed by the AO and the CIT(A) confirmed the said disallowance and the assessee is in second appeal before us. On going through the chart filed by the assessee, we find that the percentage of physical difference on sales is 0.55% and on cost of goods sold is 0.79%. This is a little higher than the loss claimed by the assessee in the earlier assessment year. However, for the detailed reasoning given by us for the earlier assessment year, we grant relief to the assessee on this count also.

III. Breakage: The assessee had claimed a sum of Rs.58,106/- on account of breakage of glass bottles which was disallowed by the AO and confirmed by the CIT(A). This is similar to the assessee's

Page 23 of 33

claim for earlier assessment year and for the detailed reasoning given therein, we set aside the addition. This ground of appeal is allowed.

IV. Expired inventory: The assessee-company had debited a sum of Rs.12,97,222/- as 'shelf life expiry'. When enquired about the same, the assessee, vide letter dated 12/8/2009 stated that the assessee-company was trading in special chemicals which has specialized uses and the assessee, being a leading supplier of such high quality research chemicals, has to maintain high quality all the time. It was submitted that due to oxidation and chemical reactions, the products lose shelf life and hence are scrapped and claimed as expiry products. The AO did not agree with this contention of the assessee and held that the entire purchase of the assessee is from parent holding company and if any item has reached expiry date, then the assessee may have been compensated by the holding company. Therefore, he disallowed 50% of the claim and brought it to tax.

(ii) Aggrieved, assessee preferred an appeal before the CIT(A) who granted partial relief to the assessee and the assessee is in second appeal before us.

(iii) The learned counsel for the assessee, while reiterating the submissions made before the authorities below, has placed reliance upon the following judgments:

- i. *Alfa Laval India Ltd. vs. DCIT* (2003)(133 Taxman 740) and
- ii. *CIT vs. Wolkem India Ltd.* (2009)(315 ITR 211)(Raj.)

Page 24 of 33

(iv) Having regard to the rival contentions and the material on record and the judicial precedents on the issue, we find that this issue is covered in favour of the assessee by the decisions relied on by the assessee cited supra. The Hon'ble Bombay High Court in the case of *Alfa Laval India Ltd.* (cited supra) has observed at para.8 of its order as under:

"8. In the present case, there is no dispute that the duly certified auditor's report placed before the AO clearly justified valuation of obsolete items at 10 per cent of cost. There is no dispute that the assessee is entitled to value the closing stock at market value or at cost whichever is lower. It is also not in dispute that the value of the closing stock has been taken as the value of the opening stock in the subsequent year. Moreover, it is also not disputed that the obsolete items were in fact sold in the subsequent year at a price less than 10 per cent of the cost. Under the circumstances, it could not be said that the valuation of the obsolete items done by the assessee and certified by the auditors was not proper or arbitrary. The AO in fact has arbitrarily valued the items in question at 50 per cent of the cost without disclosing the basis of such valuation. The AO had not doubted the correctness of the certificate of the auditors regarding the valuation of obsolete items. The summary of the obsolete items were before the AO. There is nothing on record to show that the assessee was called upon to furnish the list of obsolete items or that the assessee was called upon to establish that the items were not moving for 3 years. Under these circumstances, it could not be said that the assessee has failed to furnish list of obsolete items and failed to establish that the said items were not moving. In the absence of any basis for valuing the obsolete items at 50 per cent of the cost, the Tribunal could not have upheld the findings of the AO on the ground that the list of obsolete items were not produced by the assessee. Accordingly, we answer the question No. 1 in the negative, that is, in favour of the assessee and against the Revenue."

Similarly, the Hon'ble Rajasthan High Court, in the case of *Wolkem India Ltd.*, (cited supra) in para.5 of its order held as under:

"9. As per the provisions of s. 145A of the Act of 1961, the income from business under the head "Profits and gains from business" has to be computed in accordance with method of accounting regularly employed by the assessee. Similarly, s. 145A

Page 25 of 33

of the Act of 1961 provides that the inventory shall be valued in accordance with the method of accounting employed by the assessee therefore, if the method of valuation adopted by the assessee is recognized method then the same cannot be rejected on the ground that the net realizable value/market value has been determined on the basis of certain estimate. It is to be noticed that the AO while holding that the inventories valued by the assessee @ 5 per cent is excessive did not care to estimate the net realizable value of the store and proceeded to disallow the amount of Rs. 68,59,108 written off as obsolete stores and claimed in P&L a/c altogether. It has come on record that the assessee has valued the inventories such as nut bolt glass fuse bearing bushes, lock pin, pipe, screw etc. which were rusted, non-moving and unusable on account of obsolescence/damage/deterioration by efflux of time at cost and net realization value, whichever is lower. It has also come on record that these items were 5-6 years old. It is also not disputed before this Court that the assessee had made the requisite efforts to dispose of the same. That apart, some of these items were actually sold in subsequent years at a price 8.43 per cent of the cost. Thus, considering the totality of the facts and circumstances, in our considered opinion the value of the stores inventory written down taken at 10 per cent of the cost by the CIT(A), cannot be faulted with."

Taking the above into consideration and the nature of the assessee's business, we agree with the contention of the assessee that the goods of the assessee which are nearing expiry date have to be written off. Further, the ratio of such goods to sale is only 0.12% on sales and 0.18% on cost of goods sold. Therefore, we are of the opinion that such disallowance is not called for. The assessee's ground is accordingly allowed.

V. Management fee paid to Sigma Aldrich, USA: The assessee had claimed a sum of Rs.8,01,383/- as paid to Sigma Aldrich, USA which was disallowed by the AO and on appeal, the CIT(A) held that though the genuineness of the expenditure cannot be doubted, it cannot be allowed u/s 40(a)(ia). While the learned counsel for the assessee reiterated the submissions made by the assessee for the

earlier year i.e. 2005-06, the learned Departmental Representative supported the orders of the authorities below.

(ii) For the reasons given in the earlier assessment year on this very issue, the ground of appeal is treated as allowed for statistical purposes.

(iii) In the result, the assessee's appeal (IT(TP)A No.269/Bang/2012 is partly allowed.

IT(TP)A No.388/Bang/2012 (A.Y.2006-07):

7. In this appeal, the revenue has raised grounds against deletion of the following additions:

I. Stock issued for Genosys production as consumables: The assessee had written off Rs.27,01,436/- as raw material supplied to its own laboratory facility called Genosys Production. On enquiry, the assessee submitted as under:

"Sigma Aldrich has a small production laboratory facility called Genosys production. When raw materials for this purpose is issued for production, inventory is reduced and the same entry is routed through the scrap account in SAP as issue to cost center. This account is similar to cost of goods used for production. As the scale of this operation is very low, a separate account has not been maintained in this regard"

The AO was not convinced with the assessee's contentions and disallowed the same against which the assessee preferred an appeal before the CIT(A) who allowed the same and the revenue is in appeal before us.

Page 27 of 33

(ii) The learned Departmental Representative submitted that the CIT(A) has given relief to the assessee without verifying the contentions of the assessee that Genosys is the laboratory facility of the assessee and also that it has offered income from sale of products manufactured from the raw material supplied by the assessee-company.

The learned counsel for the assessee, on the other hand, supported the order of the CIT(A) and also the contentions of the assessee in the statement of facts filed before the CIT(A).

(iii) On perusal of the material on record and also on consideration of the rival contentions, we find that before CIT(A) the assessee has contended that the raw material supplied by the assessee to its own laboratory facilities of Genosys Production have been written off by the assessee but the goods manufactured by Genosys Production has been traded and income there-from has been declared as assessee's own income and therefore there is no necessity of making disallowance and the CIT(A) has accepted this contention of the assessee.

(iv) Having regard to the rival contentions and the material on record we find that though the assessee has claimed that Genosys Production has manufactured the products and offered income from sale of these products as assessee's income, the CIT(A) has not verified the same and has accepted the contentions of the assessee at face value and allowed relief to the assessee. In view of the same, we

deem it fit and proper to remit this issue to the file of the AO to verify the assessee's contention and if it is found to be correct, then no disallowance shall be made. This ground of appeal is accordingly treated as allowed for statistical purposes.

II. Payment to M/s.Indelox: This ground is similar to the revenue's ground of appeal for assessment year 2005-06 and for the detailed reasons given therein, this ground of appeal is rejected.

8. In the result, the revenue's appeal is treated as partly allowed for statistical purposes.

9. Assessment year: 2007-08:

I. Shortage in receipt of goods: The assessee had claimed a sum of Rs.43,68,182/- as shortage in receipt of goods which was disallowed by the AO and the disallowance was confirmed by the CIT(A) against which the assessee is in appeal before us.

From the chart filed by the assessee, we find that the shortage amounts to 0.27% of sales and 0.36% on cost of goods sold. This is quite negligible as compared to the total turnover of the assessee for the relevant assessment year. Therefore, following the detailed reasoning given by us in the earlier assessment year 2005-06 this ground of appeal of the assessee is allowed.

II. Breakage:

The assessee had claimed a sum of Rs.65,56,679/- towards breakage of glass bottles etc., which was disallowed by the AO and against the same assessee filed an appeal before the CIT(A) who granted partial relief to the assessee and the assessee is in second appeal against the balance addition confirmed by the CIT(A).

We find that the entire claim of the assessee amounts to 0.41% on sales and 0.54% on cost of goods sold. Similar issue had arisen in the assessment year 2005-06. For the detailed reason given therein, this ground of appeal is allowed and the addition is set aside.

III. Quality rejects:

The assessee had claimed a sum of Rs.20,18,194/- towards products which have been rejected on account of quality both locally and globally. These are the quality rejects of certain batches from customers from anywhere across the world which are informed by the corporate office or other office to the company who in turn scraps the entire batch as the same has not met the quality standards since the material will be contaminated. AO disallowed the same and the CIT(A) has granted partial relief to the assessee. Against the order of the CIT(A), both the assessee as well as the revenue is in appeal before us.

(ii) The learned counsel for the assessee submitted that it is the assessee's quality policy that wherever quality of any batch is rejected by the customers from anywhere across the world, the assessee scraps the entire batch as the same has not met the standard quality. It is

Page 30 of 33

further submitted that the AO has not doubted the genuineness of the said quality rejection but has disallowed the same without any reasoning and the CIT(A) has also not given any reasoning for confirmation of the disallowance.

(iii) We find that the contentions of the assessee are correct. Neither the AO nor the CIT(A) has doubted the genuineness of the expenditure and the CIT(A) has allowed 25% of the claim as allowable deduction by holding that the quality check measures are an integral part of any professionally managed company and it is not likely that quality measures would be treated in a casual manner, thus requiring significant write off. From the chart given by the assessee, we find that the quality rejection amounts to 0.13% of sales and 0.17% on cost of goods sold. Considering the nature of the goods manufactured by the assessee, it cannot be presumed that the quality of goods is always met and that write off is not necessary. Therefore, since genuineness of the expenditure has not been doubted by the authorities below, we are inclined to grant full relief to the assessee on this issue and the assessee's ground is accordingly allowed and the revenue's ground is rejected.

IV. Miscellaneous stock write-off: The assessee had claimed a sum of Rs.2,45,785/- towards stock written off which was disallowed by the AO and on appeal, the CIT(A) observed that this claim of Rs.2,45,785/- includes claims under various other heads viz., difference in physical inventory and quality rejects which have already been dealt with in other grounds of appeal. Therefore, he confirmed

Page 31 of 33

the addition. The assessee is in appeal before us. However, the learned counsel for the assessee has not been able to rebut this finding of the CIT(A) that it appears to be duplication without any specific justification. Therefore, we see no reason to interfere with the order of the CIT(A) on this issue and this ground of appeal is rejected.

10. In the result, the assessee's appeal is partly allowed and the revenue's appeal is dismissed.

11. Assessment year: 2008-09:

I. Shortage in receipt of goods: The assessee has claimed a sum of Rs.42,74,036/- as shortage in receipt of goods which was disallowed by the AO and the addition has been confirmed by the CIT(A) against the same, the assessee is in appeal before us.

We find that the shortage amounts to 0.20% on sales and 0.27% on cost of goods sold. For the detailed reasons given by us for the assessment year 2005-06, we allow this ground of appeal of the assessee.

II. Physical Difference:

The assessee had claimed a sum of Rs.89,14,241/- on account of physical difference in stock and the AO has disallowed the same which has been confirmed by the CIT(A) and the assessee is in second appeal before us. In the chart filed by the assessee, we find that the difference in stock amounts to 0.42% on sales and 0.56% on cost of goods sold. For the detailed reasoning given by us for the assessment year 2005-06 this ground of appeal is allowed.

III. Breakage:

The assessee has claimed a sum of Rs.5,48,567/- on account of breakage of glass bottles and the addition was confirmed by the CIT(A). Against the same, the assessee is in appeal before us.

On going through the chart filed by the assessee, we find that the breakage amounts to 0.03% of sales and 0.03% on cost of goods sold which is quite negligible. For the detailed reasons given by us in the assessment year 2005-06, this ground of appeal of the assessee is allowed.

IV. Expired Inventory:

The assessee had claimed a sum of Rs.11,51,822/- towards expired inventory which was disallowed by the AO and the CIT(A) has granted partial relief to the assessee against which the assessee is in appeal before us. On going through the chart filed by the assessee, we find that it accounts for 0.05% on sales and 0.07% on cost of goods sold. For the detailed reasons given by us for the assessment year 2005-06, this ground of appeal of the assessee is allowed.

V. Quality rejects:

The assessee had claimed a sum of Rs.93,31,861/- on account of quality rejection of goods not meeting quality standard which was disallowed by the AO and on appeal, the CIT(A) had granted partial relief to the assessee. Both the assessee as well as the revenue is in cross-appeals before us. For the detailed reasons given by us against

the same for the assessment year 2007-78 this ground of appeal is allowed and the ground of appeal of the revenue is rejected.

VI. Management fee paid to Sigma Aldrich, USA:

The assessee has claimed a sum of Rs.8,34,544/- as management fee paid to Sigma Aldrich, USA. We find that this issue had arisen for the earlier assessment year i.e. 2005-06. For the detailed reasons given therein, this ground of appeal is treated as allowed for statistical purposes.

In the result, the assessee's appeal is partly allowed and the revenue's appeal is dismissed.

12. In the result, all the appeals of the assessee are partly allowed. Revenue's appeal bearing IT(TP)A No.388/Bang/2012 is partly allowed for statistical purposes and all the other appeals viz., IT(TP)A Nos.387/Bang/2012, IT(TP)A Nos.1416 & 1399/Bang/2013 are dismissed.

Pronounced in the open court on 24th July, 2015.

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER
eksrinivasulu

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore