

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 1384/MUM/2009
(Assessment Year : 1999-2000)
ITA No. 1385/MUM/2009
(Assessment Year : 2000-01)
ITA No. 1386/MUM/2009
(Assessment Year : 2001-2002)

Medley Pharmaceuticals Ltd.
Medley House, D-2, MIDC Area,
16th Road, Andheri (East),
Mumbai 400 093
PAN: AAACM 2764J
Vs.

... Appellant

The DCIT, Central Cir.44,
Mumbai

.... Respondent

Appellant by : Shri Prakash Jotwani
Respondent by : Shri N.P. Singh

Date of hearing : 06/05/2016
Date of pronouncement : 29/06/2016

ORDER

PER G.S. PANNU,AM:

The captioned are three appeals, preferred by the assessee pertaining to assessment years 1999-2000, 2000-01 and 2001-02. Since these appeals relate to the same assessee and involve common issues,

they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. The appeal in ITA No.1384/Mum/2009 pertaining to assessment year 1999-2000 is taken as the lead case. This appeal is directed against the order passed by the CIT(Appeals) Central-II, Mumbai dated 17/12/2008, which in turn arises out of an order passed by Assessing Officer under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (in short 'the Act') dated 30/12/2006

3. The assessee has raised the following Grounds of appeal:-

On the facts and in the circumstances of the case and in law:

1. The learned CIT(A) erred in confirming the invocation of provisions of sec. 153A when there was no material found during the course of the search leading to any additions/ disallowances.

2. a) The Id. CIT(A) erred in confirming the disallowance of claim ix] s.801A on Daman Units I & II.

b) The Id. CIT(A) erred in holding that Unit 1 at Daman was formed with transfer of machinery from Aurangabad Unit and thus violated provisions of sec.801A while transfer of machinery was much within the limits laid down in Sec.801A.

c) The Id. CIT(A) further erred in confirming that Unit No.2 at Daman was an extension of Unit No.1 while it was a separate and independent unit manufacturing a different product with new machinery and new labour and the portion of machinery that was transferred from the Aurangabad Unit was insignificant and within percentages laid out in the provisions of sec.801A.

4. The brief background of the case is that the appellant is a company incorporated under the provisions of the Companies Act, 1956 and is, inter-alia, engaged in the business of manufacturing and trading of bulk drugs as well as pharmaceutical formulations,

comprising oral liquids, tablets and capsules. The dispute in the captioned appeals is arising out of assessment finalized by the Assessing Officer under section 143(3) r.w.s 153A of the Act following a search and seizure action carried out by the Department under section 132(1) of the Act in the case of assessee and its group entities. Notably, the assessee company is part of Medley Group of companies and its manufacturing facilities are located at Aurangabad and Daman and its registered office is in Mumbai. In the search action under section 132 of the Act carried out in the Group on 18/11/2004, multiple premises, being offices, factories, godowns as well as residences of the Directors of the Group companies, etc. were covered by the search or survey action. The discussion in the assessment order reveals that in the course of search and survey action various documents/ records were seized / impounded/ found. In the ensuing assessment, the Assessing Officer has mainly objected to the claim of deduction made by the assessee under section 80IA/80IB of the Act in respect of the industrial undertakings set-up by the assessee at Daman. According to the assessee, it had two independent manufacturing units at Daman, namely, Unit-1 and Unit-2. The amount of deduction claimed by the assessee under section 80IA of the Act with respect to Units 1 & 2 of Daman for the assessment year 1999-2000 amounted to Rs.2,97,25,838/-. The deduction under section 80IA/80IB claimed with respect to both the units have been denied by the Assessing Officer, which has been further affirmed by the CIT(Appeals).

4.1 The substantive dispute before us arises from the action of the income-tax authorities in denying assessee's claim for deduction under

section 80IA of the Act with respect to Unit-1 and Unit-2 at Daman. Considering the short controversy before us, we proceed to cull out the relevant facts from the material on record and the orders of the authorities below, which would enable us to decide the aforesaid dispute appropriately. The assessee company is in the business of manufacturing of oral liquids, tablets and capsules since 1976 from its initial location at Aurangabad. In 1994, the assessee company set up a unit at Daman, which is termed as Unit-1. In Unit-1, assessee is undertaking manufacture of oral liquids only. Further, it emerges from the record that in the year 1998, assessee company set-up another manufacturing unit in Daman, termed as Unit-2. In Unit-2, the assessee company is undertaking manufacture of tablets and capsules but some oral liquids and B-lactam antibiotics. In so far as Unit-1 is concerned, notably it has availed the benefit under section 80IA of the Act from assessment year 1995-96 onwards. The claim under section 80IA of the Act with respect to Unit-2 is made for the first time in assessment year 1999-2000.

4.2 In the impugned assessment, the claim with respect to Unit-1 has been denied primarily on the ground that the value of machinery transferred to Unit-1 exceeds 20% of the total value of the machinery and plant used in the business of Unit-1. The aforesaid condition is contained in Explanation -2 r.w. clause (ii) of section 80IA(2) of the Act. The charge made against the assessee is that on the basis of the search and survey action it was found that old used machinery from Aurangabad Unit was transferred to Unit-1 at Daman which was in excess of the 20% of the total value of the plant and machinery used in

the business of Unit-1. The aforesaid objection is the sum and substance of the dispute before us inasmuch as the plea of the assessee is that it has complied with the requirement contained in section 80IA(2)(ii) r.w. Explanation -2 thereof.

4.3 Before we start to address the factual contours of the controversy in detail, we may briefly touch upon the legal position on the subject. Section 80IA of the Act postulates deduction in respect of profits and gains from industrial undertakings in certain cases specified therein. Admittedly, the manufacturing unit set-up by the assessee by way of Unit-1 at Daman is otherwise entitled to the claim of deduction because the only objection raised by the Revenue is what we have stated earlier. Sub-section (2) of section 80IA prescribes that the benefits envisaged in the section apply to such industrial undertaking, which fulfils the conditions prescribed therein. One of the conditions prescribed is contained in clause(ii) of section 80IA(2), which is to the effect that such industrial undertaking shall not be formed by transfer to new business the machinery or plant previously used for any purpose. Furthermore, in Explanation -2 thereof, it is provided that where in the case of an industrial undertaking, any machinery or plant previously used by any purpose is transferred to new business, then the total value of the machinery or plant so transferred should not exceed 20% of the total value of the machinery or plant used in the business. This condition is the subject matter of dispute in the present case inasmuch as the case set-up by the Revenue is that the plant and machinery transferred from Aurangabad unit to Daman Unit-1 is in

excess of 20% of the total value of the plant and machinery at Unit-1, Daman.

4.4 In this context, it is to be noted that the conditions prescribed in sub-section (2) of section 80IA from clauses (i) to (v) are of varying quality inasmuch as some of them are to be fulfilled at the time of the set-up or the initial year and some conditions are of such nature, which have to be consistently adhered to by an assessee during the entire period of claim. Notably, the condition which has been invoked by the Revenue in the present case (i.e. clause (ii)) is to be evaluated at the time of formation of the unit. Ostensibly, the instant assessment year is 1999-2000, which is not the year of formation of the unit, which admittedly was the previous year relevant to the assessment year 1995-96. It is also an established position that assessee has been allowed benefit of section 80IA of the Act right from assessment year 1995-96 in relation to Daman Unit-1. Therefore, on a prima-facie basis, the action of the Assessing Officer in denying the deduction in assessment year 1999-2000 is legally untenable and unwarranted as it seeks to disturb an accepted position, and that too based on a condition which is required to be evaluated in the initial year only. Be that as it may, we have also considered the factual matrix of the case because the Assessing Officer has attempted to make out a case that the documents/ information found in the course of search and survey carried out on the group on 18/11/2004 has revealed non-compliance with the aforesaid condition.

4.5 A perusal of the assessment order reveals that as per the Assessing Officer the transferred plant and machinery in Daman Unit-1 constitutes 29% of the total value of plant and machinery. Furthermore, the Assessing Officer also says in para 9.2 of his order that after discussion with one Mr. Anil Bhoot, General Manager(Finance), the correct percentage of old used machinery vis-à-vis the total plant and machinery works out to 22%. Be that as it may, the entire discussion in this regard is contained in para 9.2 of the assessment order and apart from asserting that the percentage of old used machinery vis-à-vis the total plant and machinery is 29% or 22%, the Assessing Officer has not tabulated either the value or the names of such machinery. For this very reason, assessee had raised a specific point before the CIT(Appeals). Before the CIT(Appeals), assessee had asserted, and a reference to which has been made by the CIT(Appeals) in para 2.3 of his order, that the item-wise and value of the machinery transferred from Aurangabad Unit to Daman Unit-1 in the course of previous year 1996-97 relevant to assessment year 1997-98 is as under:-

S.No.	Name	WDV – Amount (Rs.)
1	Rotary Bottle Working Machine	24,406
2	Semi Automatic R.O.P.P	3,815
3	Conveyor Belt	4,857
4	Automatic Liquid Filling Machine	28,171
	Total	Rs. 61,049

It has been further explained that Rs.830/- value of machinery was transferred in previous year 1998-99 relevant to assessment year 1999-2000 and Rs.6754/- in relation to assessment year 2000-01. In fact, in

the initial year, it has been claimed that no old machinery was transferred to Daman Unit-1.

5. Before the CIT(Appeals), we find that the assessee made varied factual submissions countering the findings of the Assessing Officer. The CIT(Appeals) has also called for a remand report from the Assessing Officer. Such remand report has also been reproduced by the CIT(Appeals) in the impugned order. In such remand report, the Assessing Officer considered that the value of old machinery transferred from Aurangabad Unit to Daman Unit-1 consisted of three tanks of Rs.5,61,600/- and the total value of machinery in Daman Unit-1 being Rs.24,90,866/-, thereby reflecting that the proportion of old machinery was 22%. We shall deal with this aspect a little later.

5.1 Before CIT(Appeals), the assessee pointed out that the figure of Rs.19,29,266/- referred by the Assessing Officer in the remand report was unverifiable. The said amount was stated to be the value of new plant and machinery of Daman Unit-1 as on 31/3/1994. As per the assessee, it had purchased three S.S Jacketed Tanks for Rs.1,87,200/- each when Daman Unit-1 was started. The manufacturing facilities at Aurangabad Unit was for liquid orals, which was an old facility using plain S.S Tanks without top and without any jacket for manufacturing of syrups, whereas for its Daman Unit-1, assessee acquired Jacketed Tanks, which were totally closed with top dish. Thus, the allegation by the Assessing Officer that tanks from Aurangabad Unit were transferred was untenable. The assessee also pointed out that its Aurangabad Unit was working till 1997, whereas Daman Unit-1 had commenced

production in 1994 itself, therefore, the Daman Unit-1 could not have been started by transferring the said tanks from Aurangabad unit.

5.2 All these factors have been considered by the CIT(Appeals), so however, he has ultimately upheld the stand of the Assessing Officer. In para 3.4.9 of his order, the CIT(Appeals) records that all plant and machinery from Aurangabad unit could not be considered to have been transferred to Daman Unit-1, but atleast two tanks were transferred from Aurangabad unit and two from another concern. The CIT(Appeals) has also referred to the statement given by Mr. Sahir Khatib in the course of search action. The failure of the assessee to produce delivery challans of certain machineries before the Assessing Officer also led the CIT(Appeals) to conclude usage of old machinery in Daman Unit-1. The CIT(Appeals), in fact, records in para 3.4.7 that usage of old machinery at Daman unit-1 amounts to 29.1%, which according to him was beyond the permissible limit of 20%, hence, he sustained the action of Assessing Officer in denying the claim under section 80IA of the Act.

6. Before us, Ld. Representative for the assessee has made detailed submissions. The primary argument led by the assessee is that the CIT(Appeals) has incorrectly taken the total value of new plant and machinery as on 31/3/1994 at Rs.19,29,226/-, whereas the correct value is Rs.31,41,563/-. The aforesaid figure is sought to be justified on the basis of the audited annual accounts filed with the respective return of income and which has also been subjected to assessments in the past years. Ld. Representative for the assessee submitted that all-

along the Annual Accounts furnished by the assessee have not been doubted and in fact the depreciation has been allowed with respect to the assets based on asset values depicted in the returns of income.

6.1 Ld. Representative for the assessee also pointed out that the reference made by the CIT(Appeals) to the impounded papers in para 3.4.7 to justify usage of old machinery at 29.1% was erroneous because the same has been incorrectly understood. In this context, it was pointed out that there is no difference in the value of plant and machinery found recorded in the audited accounts vis-à-vis the papers found in the course of search. In this context, our attention was specifically invited to the assertions of the lower authorities, whereby it is stated that the seized material reflect the usage of old machinery at Daman Unit-1 in excess of 20%. Countering the aforesaid, Ld. Representative for the assessee pointed out that there is no material adduced at any stage to justify such inference.

6.2 On facts, the Ld. Representative for the assessee pointed out that since assessee has furnished the bills of purchase of new Tanks, there is no repudiation of the same. At the time of hearing, Ld. Representative for the assessee furnished voluminous Paper Books, especially Paper Book-6, which contained detailed note on reconciliation of the fixed assets shown in the annual accounts for the period ending 31/3/1993 to 31/3/1995 for Daman Unit-1. On the basis of the aforesaid, it is sought to be made out that even if the total value of the new plant and machinery be taken as Rs.19,29,266/-, as adopted by the CIT(Appeals), yet the value of old asset transferred is less than

20% as it is merely 68,633/-. In any case, it is sought to be asserted that the total value of the plant and machinery of Daman Unit-1 is Rs.31,41,563/- and considering the old transferred machinery of Rs.68,633/-, it constitutes only 2.1% of the total machinery. In support, assessee has furnished extract of the annual financial statement as also the ledger account of the fixed assets of Daman Unit-1 for the period from 31/3/1993 to 31/3/1995. In particular, the following was submitted and referred to:-

1. *Summary of fixed assets as on 31/03/1993* - A-1
2. *Summary of fixed assets as on 31/04/1993* - A-2
3. *Summary of fixed assets as on 31/3/1995* - A-3 to A-7
4. *List of additions to Plant and Machinery of Unit 1 during 1993-94 for Rs.25,64,307/- as on 1/4/94* - A-8 to A-10
5. *List of additions to Plant & Machinery of Unit 1 during 1993-94 for Rs.5,77,256/-* - A-11 to A-13
6. *Accounts entries passed while capitalizing to accounts.* - A-14 to A-32

6.3 The aforesaid submissions put-forth by the assessee as well as order of the authorities below throw-up an issue which revolves around factual appreciation of the affairs. Admittedly, there are conflicting findings in the orders of the authorities below as to the total value of the plant and machinery of Daman Unit-1, as also the value of old plant and machinery stated to have been transferred from Aurangabad unit. Under these circumstances, it was found imperative to obtain a remand report from the Assessing Officer. The relevant report has been furnished by Ld. CIT-DR before us in the course of the hearing. Ld. Representative for the assessee has also furnished the say of the assessee on such report of the Assessing Officer.

7. Ld.CIT-DR, appearing for the Revenue has attempted to support the stand of the Revenue to the effect that the usage of old machinery at Daman Unit-1 was more than the permissible limit of 20% and thus, the disallowance of deduction under section 80IA of the Act was quite proper.

8. We have considered the material being put-forth by the assessee in the context of the objections raised by the income-tax authorities. Ostensibly, in so far as the assessment order is concerned, it does not bring out the figures of total plant and machinery of Daman Unit-1 or the old machinery claimed to have been used from Aurangabad unit. The finding of the CIT(Appeals) is that machinery purchased for Daman Unit-1 till 31/3/1994 was for Rs.19,29,266/- only and that the plant and machinery consisted of three S.S Jacketed Tanks of Rs.1,87,200/- each. At this stage, the CIT(Appeals) states that the list of plant and machinery impounded from Aurangabad unit shows that three Tanks were transferred from Aurangabad unit to Daman Unit-1. Considering that the total expenditure incurred by the assessee on account of Jacketed Tanks was Rs.5,61,600/-, he proceeded to hold the usage of old machinery at Daman Unit-1 at 29.1%.

8.1 We have considered the aforesaid finding of the CIT(Appeals) and find that it does not conform to the schedule of fixed assets forming part of the Annual Accounts of the assessee, a copy of which has been placed before us. In terms of the details furnished by the assessee, based on audited annual accounts, the following position has been argued by the appellant before us:-

“Please refer to page A-1 of PB-VI filed. It is statement of Fixed Assets as at 31.03.1993. As on 31.03.1993, the total machinery shown is Rs.36,26,956/-. As on 31.03.1994(Pg A-2) total machinery shown is Rs.31,75,090/- and at the bottom is Capital WIP of Rs.101,04362/-. The said Capital WIP was capitalized to Accounts as on 01.04.1994 (Page A-4 to A-7). The value of Machinery capitalized as on 01.04.1994 to Unit I at Daman is Rs.25,64,307/-. List of Machinery is at page A-8 to A-10. Further Machinery valued at Rs.5,77,256/- was capitalized during the period 01.04.1994 to 31.03.1995 for Daman Unit I, list of which is at pg A-11 to A-12. Thus machinery purchased for operations of Daman Unit I is valued at Rs.31,41,563/- as on 31.03.1995. The revenue has not given details of value of machinery for Daman Unit I being Rs.19,29,266/- (pg 19 of CIT(A) Order). Further CIT(A) has considered the value of machinery at Rs.19,29,266/-(pg 43 of the order). At 466 is list of machinery transferred from Aurangabad to Daman Unit I. The cost of value machinery transferred from Aurangabad is Rs.3,07,000/- while WDV of all such machinery is Rs.68,633/-.

Thus, the denominator of value of machinery should be taken at Rs.31,41,563/- in place of Rs.19,29,266/- as considered by CIT(A). The figure of Rs.19,29,266/- is misplaced as there is no breakup or details given by the AO in his assessment order as well as in his 3 remand reports as well as by the CIT(A).”

8.2 Now, on one hand, the assessee has justified the total value of machinery on the basis of annual accounts i.e. at Rs.31,41,563/- in place of Rs.19,29,266/- considered by the CIT(Appeals). The figure adopted by the CIT(Appeals) does not find any justification even in the report that has been furnished by the Assessing Officer before us. There are only bald assertions from the side of the Department that the usage of old machinery being in excess of 20% was accepted even in the course of assessment proceedings by the employee of the assessee Mr. Anil Bhoot, General Manager(Finance). In our view, in spite of the assertions to the contrary by the assessee right from the level of the CIT(Appeals), the Assessing Officer has not been able to demonstrate and justify how the figure of plant and machinery of Daman Unit-1 has been adopted at Rs.19,29,266/- as on 31/3/1994. In any case, the first year for the claim of deduction under section 80IA for Daman Unit-1

was assessment year 1995-96 and the value of machinery is depicted at Rs.31,41,563/-. Even if, we go alongwith the CIT(Appeals) and take the value of old transferred machinery at Rs.5,61,600/-, even then considering a total value of machinery at Rs.31,41,563/-, the percentage of usage of old machinery falls below 20%. This aspect was specifically put to the Ld. CIT-DR at the time of hearing but no cogent arguments have been made except reiterating the position contained in the order of the CIT(Appeals).

8.3 Apart therefrom, we find that the assessee had argued before the CIT(Appeals) that machinery to the extent of Rs.68,633/- only, detailed in the earlier part of this order, were transferred from Aurangabad unit to Daman Unit-1. There is no categorical repudiation of such stand of the assessee apart from generalized observation of the CIT(Appeals) which have been thereafter affirmed by the CIT(Appeals). Even before us, the stand of the appellant company is that only machineries to the extent of Rs.68,633/- have been transferred to Daman Unit-I. In fact, in this context reference was made to Page-466 of the Paper Book to elaborate that the value of transfer in financial year 1996-97 was Rs.61,049/-; Rs.830/- in financial year 1998-99; and, Rs.6,754/- in the financial year 1999-2000. In this detail, it has also been pointed out that the transfer of Rs.6,754/- in financial year 1999-2000 included the WDV of two tanks of 1000 litres and 2000 litres. On the contrary, it has also been asserted that the CIT(Appeals) in Para 3.4.7 has wrongly considered the value of machinery transferred at Rs.5,61,600/-, being 3 S.S. Jacketed Tanks of Rs.1,87,200/- each. On this aspect the Ld. Representative for the assessee vehemently pointed out

that Rs.5,61,600/- was the cost of three new S.S. Jacketed Tanks purchased by the assessee and that same does not reflect any transfer of old machinery from Aurangabad Unit to Daman Unit-I. The aforesaid point made out by the assessee is liable to be upheld because we find that even in the remand report furnished by the Assessing Officer before us, there is no substantiation as to how the figure of Rs.5,61,600/- has been arrived at although assessee has consistently pointed out that the same reflects the purchase price of new S.S. Jacketed Tanks. As a consequence, we have no reason to distract from the position that old machinery to the extent of Rs. 68,633/- only have been transferred from Aurangabad Unit to Daman Unit-I at the relevant point of time and not the amount of Rs.5,61,600/- considered by the CIT(Appeals).

8.4 We may also refer to the stand of the Assessing Officer that usage of old machinery is based on the statement made by Mr.Sahir Khatib in the course of search action and by Mr. Anil Bhoot, General Manager(Finance) during the assessment proceedings. Additionally, it is also asserted that the premise of the Revenue is based on the seized material. The aforesaid assertions of the Revenue, in our view, do not distract from the factual matrix, which clearly support the assertion of the assessee that the total value of the old machinery at Daman Unit-1 is within the permissible limits. In fact, the orders of the authorities below do not bring out any specific material except generalized observations, which we have already dealt with. Even in the report furnished before us, Assessing Officer has not substantiated that how

the figure of old machinery at Rs,5,61,600/- and that of the total machinery in Daman Unit-1 at Rs.19,29,266/- have been adopted.

9. Considering the entirety of facts and circumstances of the case and the material on record, we are unable to uphold the stand of the Revenue that the Daman Unit-1 has been set-up with value of old machinery in excess of 20% of the total value of machinery and, therefore, on facts also, we find no reason to affirm the denial of deduction under section 80IA of the Act with respect to Daman Unit-1. Thus, on this aspect assessee succeeds.

10. Another aspect of the controversy relates to denial of claim of deduction u/s. 80IA of the Act in respect of Daman Unit-2. The claim of deduction u/s. 80IA of the Act for Daman Unit-2 has been made for the first time in assessment year 1999-2000. The Daman Unit-2 is stated to have been set-up in the year 1998 for manufacture of tablets, capsules and B-lactum antibiotics. The Assessing Officer as well as the CIT(A) have denied the claim on identical considerations. In nutshell, the stand of the Revenue is that Daman Unit-2 does not have independent existence, inasmuch as, it can be viewed as a part of Daman Unit-1 itself. According to Revenue, both units have a common excise registration, common electricity and water connection and, therefore, Daman Unit-2 is nothing but merely an extension of Daman Unit-1. Therefore, the Assessing Officer held that Daman Unit-2 could not be considered as a new unit and the benefits of section 80IB could not be separately available to Daman Unit-2 and it should run concurrently with Daman Unit-1 itself.

11. On the other hand, the stand of the assessee before lower authorities as well as before us is to the effect that the Daman Unit-2 is separate and distinct unit which is engaged in the business of manufacture of tablets, capsules and B-lactum antibiotics; the products which are different from the products being manufactured at Daman Unit-1. It has been pointed out that merely because the central excise, sales tax registration, etc. are common cannot be considered as a good ground to say that Daman Unit-2 was a part and parcel of Daman Unit-1. Ld. Representative for the assessee pointed out that Daman Unit-1 was set-up in the year 1994, whereas the Daman Unit-2 has been set-up on an adjacent piece of land in 1998. It was pointed out that the said land was purchased subsequently and separate building was constructed and the manufacturing unit was set-up with purchase of new machinery, new loans were raised and separate labour force was employed. It has been explained that even products manufactured in Daman Unit-1 and Daman Unit-2 are different. For this purpose reference has been made to Page-480 of the Paper Book. Our attention was also invited to page 540 of the Paper Book, wherein is placed visual photographs of the two units, which are physically separate. It was also pointed out that Daman Unit-2 meets with all the conditions prescribed in section 80IA/80IB of the Act and that there is no specific requirement of obtaining separate excise or sales tax registration. In the course of hearing, Ld. Representative for the assessee relied upon the following decisions in support of the claim of deduction under section 80IA/80IB with respect to Daman Unit-2 as a separate unit:-

1.DCIT vs. M/s. Uniglobe Packaging P. Ltd., ITA No.2669/Mum/2009

Dated 31/12/2010.

2. ACIT vs. M/s. Uniglobe Packaging P. Ltd.,ITA No.5387/Mum/2010, Dated 30/09/2011
3. M/s. FIL Industries Ltd. vs. Addl. CIT,ITA No.415(Asr)/2009 dated 27/06/2012.
4. Aqua Plumbing Pvt Ltd. Vs. ACIT, 140 TTJ 496(Asr)

On the basis of the decision of Amritsar Bench of the Tribunal in the case of Aqua Plumbing Pvt Ltd. Vs. ACIT (supra), it has been specifically argued that expansion or extension of an existing unit by itself would not disentitle the assessee from claiming deduction under section 80IA/80IB of the Act .

12. On the other hand, Ld. Departmental Representative appearing for the Revenue has primarily reiterated the stand of the lower authorities, which is to the effect that Daman Unit-2 was not an independent separate unit but is to be seen merely as an extension of Daman Unit-1.

13. We have carefully considered the rival submissions. As we have noted earlier, the assessee company is mainly engaged in the business of manufacture and trading of bulk drugs as well as pharmaceutical formulations comprising of oral liquids, tablets and capsules. The assessee company has its manufacturing facilities located at different places and so far as the controversy before us is concerned, it is confined to manufacturing activities carried out in the two units located at Daman, namely, Daman Unit -1 and Daman Unit-2. Daman Unit-1 is in operation since assessment year 1995-96 and has been claiming exemption under section 80IA of the Act. Daman Unit-2 is stated to

have been set-up in the previous year relevant to the assessment year 1999-2000 and, therefore, the claim for exemption under section 80IA and 80IB of the Act has come up for the first time in this year. The claim of exemption for Daman Unit-2 is sought to be defeated by the Revenue on the ground that it was merely an extension of Daman Unit-1. In this context, Page-480 of the Paper Book clearly establishes that the products being manufactured in Daman Unit-2 are different from those being manufactured in Daman Unit-1, although the common genre of the product is in the pharmaceutical line of business. In fact, in Daman Unit-1, assessee is undertaking manufacture of oral liquids only, whereas in Daman Unit-2 assessee company is undertaking manufacture of tablets and capsules as also some oral liquids and B-lactum antibiotics. These factual assertions have not been negated by either of the lower authorities and in fact even before us there is no material led by the Revenue which would negate the same. At this point, we may also add that we are not professing that it is imperative for the new unit to manufacture an entirely different item from what was being manufactured by the old unit in order to claim exemption under section 80IA and 80IB of the Act. Reference can be made to the judgments of the Hon'ble Supreme Court in the case of Textile Machinery Corporation Ltd. vs. CIT, 107 ITR 195 (SC) as also in the case of Indian Aluminium Co. Ltd., 108 ITR 367(SC) in this context. The aforesaid decisions would reveal the facts that show that new units were set-up for the purpose of producing the same item which were being produced in the old units. Both the judgments show that the decisive test is that industrial unit set-up must be new in the sense that new plant and machinery should be installed for producing either the

same commodity or some new commodity. In the present case, it is abundantly clear that the Daman Unit-2 has been set-up on a later date of time and it is located on a separate piece of land. The objections raised by the Revenue, in our view, do not distract from the fact that Daman Unit-2 is a physically separate industrial unit, inasmuch as, it has been established by the assessee that it has been set-up by investment of fresh funds; employment of separate labour force; manufacturing of different products; earning separate profits attributable to its activity, and is distinct and separate from the old unit. The fact that the business of the new unit comprises of products, which may be understood in the same line of activity, would not defeat the fact that the new unit has its own installed plant and machinery, factory building, etc. In fact, Amritsar Bench of the Tribunal in the case of FIL Industries Ltd. (supra) has specifically noted that there was no requirement for obtaining separate Government registration for each unit for claiming deduction u/s. 80IB of the Act. The Hon'ble Madras High Court in the case of CIT vs. Premier Cotton Mills Ltd., 240 ITR 434 (Mad) has laid down that even a single legal entity may own and operate more than one industrial undertaking and the fact of common ownership would not render the undertaking, which is otherwise capable of being separately viewed, into a common undertaking. In our view, the fact that the new undertaking so established by way of expansion is located adjacent to the existing undertaking would not render the new undertaking ineligible for the claim of deduction u/s. 80 IA/80IB of the Act. Therefore, having regard to the factual matrix, which clearly establishes that the Daman Unit-2 was separate unit having its own plant and machinery, manufacturing of products, independent funds, and

separate labour force, it cannot be considered as a mere part of the Daman Unit-1 so as to defeat its claim of deduction u/s. 80IA/80IB of the Act. Thus, on this aspect also assessee succeeds.

14. In the result, for assessment year 1999-2000 appeal of the assessee is allowed to the above extent.

15. It was a common ground between the parties that so far as the issues in assessment year 2000-01 and 2001-02 are concerned, they are pari- materia to those considered by us in the appeal of the assessee for assessment year 1999-2000 and thus our decision in the appeal of the assessee for assessment year 1999-2000 shall apply *mutatis mutandis* in the other two appeals also.

16. Resultantly, the captioned appeals of the assessee are allowed to the above extent.

Order pronounced in the open court on 29/06/2016.

Sd/-
(AMIT SHUKLA
JUDICIAL MEMBER
Mumbai, Dated 29/06/2016

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai