

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI P. M. JAGTAP, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 740/DEL/2012 (A.Y 2008-09)

M/s Hyderabad Distilleries & Wineries Pvt. Ltd. A-4, IDA, Uppal Hyderabad-39 AAACH2679B (APPELLANT)	Vs	ACIT Circle-2(2) Hyderabad (RESPONDENT)
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Appellant by	Sh. Ajay vohra, Sr. Adv & Mr. Tejaswi Jain, Adv
Respondent by	Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing	09.07.2018
Date of Pronouncement	12.07.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 6/12/2010 passed by CIT(A)-III, Hyderabad for Assessment Year 2008-09.

2. The concise grounds of appeal are as under:-

"1. That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the action of the assessing officer in holding the income received by the appellant from sub-leasing a part of the sub-licensing capacity alongwith part of the manufacturing unit amounting to Rs. 1,20,00,000/- as 'income from other sources' against the same being

declared as 'business income'.

2. That on the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in not appreciating that even after sub-leasing a part of sub-licensed capacity, which constitutes business activity, the appellant continued to carry on the business of manufacturing and there was no abandonment in the said business.

3. That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the action of the assessing officer in holding the income from packaging services amounting to Rs. 1,27,77,784/- as 'income from other sources' against the same being declared as 'business income' by the appellant.

4. That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the action of the assessing officer in holding the income from resale of raw and packing material amounting to Rs.63,62,660/- as 'income from other sources' against the same being declared as 'business income' by the appellant.

4.1. That without prejudice, the Commissioner of Income Tax (Appeals) erred on facts and in law in observing that the appellant has raised no objection in treating the income from aforesaid activities as income under the head other sources.

5. Further, without prejudice, the Commissioner of Income Tax (Appeals) erred on facts and in law in not appreciating that even if the above incomes are taxed as 'income from other sources' then deduction under section 5 7(iii) of the Act should be allowed in respect of the corresponding expenditures laid out/expended wholly and exclusively for earning the said income.

6. *That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the action of the assessing officer in making proportionate disallowance of personnel, administrative and selling expense aggregating to Rs. 1,68,23,049 disregarding the fact that the said expenses were incurred wholly and exclusively for the purpose of business.*

That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance of marketing and welfare expenses aggregating to Rs.37,47,447 which was incurred wholly and exclusively for the purpose of business.

6.1. *That without prejudice, the Commissioner of Income Tax (Appeals) erred on facts and in law in alleging that the appellant failed to provide the details and break-up of manufacturing expenses, without appreciating that the manufacturing expenses incurred by the appellant during the relevant year forms part of the regular books of accounts.*

The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal before or at the time of hearing.”

3. The assessee is engaged in the manufacture and sale of Indian Made Foreign Liquor (IMFL) since 1977. The assessee is having license to manufacture 69.98 lakhs Proof Liters ('PL') IMFL in the State of Andhra Pradesh. The license to carry on liquor manufacturing is renewed by the Excise Department, Government of Andhra Pradesh every year as per the policy of the Government of Andhra Pradesh. The assessee is having its own factory building, plant and machinery, technical lab. managerial staff and skilled labour to carry on IMFL manufacturing and selling activities. The assessee does not own any popular brand of IMFL. During the year under consideration, the assessee leased out part of its manufacturing facility alongwith licensed capacity, to the extent of 68.50 lacs PL, to M/s Jagatjit Industries Ltd. ('JIL') for commercial exploitation of its business assets. The balance licensed

capacity of 1.48 lacs PL was used by the assessee for manufacturing of its own IMFL products. The assessee also entered into another royalty based agreements with JIL for using some of JIL's Brands to supply its own manufactured IMFL products to Canteen stores Departments ('CSD') of Government of India. For this, the assessee entered into another royalty based tie-up agreement with JIL to carry on its own manufacturing and selling IMFL business. Under the terms of this agreement assessee company has paid fixed royalty to M/s JIL for using its brands - "Aristocrat Black" and "Aristocrat XXX Rum" and relevant technical know- how. The assessee also entered into another agreement with JIL for providing the latter various services required for packaging IMFL. During the year under consideration, the assessee declared income under the head 'profits & gains of business and profession' comprising of the following streams of income:

- a) Receipt of Rs. 11,59.728 on account of sale of own manufactured IMFL products supplied to CSD.

- b) Receipts from JIL on account of the following :-
 - 1) Rs. 1.20 crores in respect of business assets including factory building, plant & machinery, leased to JIL alongwith sub-lease of excise license to JIL;

 - 2) receipt of Rs. 1.27 crores in respect of provision of packaging services; and

 - 3) receipt of Rs 62.32 lacs on account of resale of raw' and packaging material.

The assessment was completed by the Assessing Officer vide order dated 26.10.2010 under section 143(3) of the Act, assessing the total income at Rs. 2,27.34,887 as against returned income of Rs. 21,64,391. In the assessment order, the assessing officer observed that above receipts from JIL on account of

leasing of factory, plant and machinery and part of the licensed capacity, provision of packaging services and re-sale of raw and packaging material was assessable under the 'income from other sources' against 'business income' as declared by the assessee. The Assessing Officer also disallowed following expenses incurred to earn the income:-

Sr. No.	Detail of expenses disallowed	Amount in Rs.
1	Personnel, administrative & selling expenses attributable to income assessable under the head "income from other sources" (refer pages 7-8 of the assessment order)	1,68,23,049/-
2	Marketing & Welfare expenses	37,47,447/-

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A).The CIT(A) affirmed the action of the assessing officer and dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is engaged in the manufacturing of IMFL products in the State of Andhra Pradesh since 1977. The assessee holds valid license for manufacturing IMFL, which is renewed on yearly basis, by the Excise Department of Government of State of Andhra Pradesh. Under terms of the prevalent excise policy, the license holder alone can sell IMFL products to Andhra Pradesh Beverages Corporation Ltd ('APBCL'). Even though the assessee had both licensed capacity and manufacturing facility for IMFL, the assessee did not, own any popular IMFL Brand. The assessee had, therefore, entered into royalty based or profit sharing agreement(s) with JIL for carrying on its business activities since 1977. Under the terms of these agreements, the assessee was manufacturing IMFL using the brands owned by JIL and was paying royalty to JIL. The assessee was, thus, manufacturing and

supplying IMFL products directly to APBCL, in its name. This arrangement continued till 30th September, 2006. Under the said arrangement, the assessee was manufacturing IMFL on contract basis using brands owned by JIL. Sales consideration received by the assessee was remitted to JIL after deducting fixed bottling charges and expenses incurred by the assessee.

6. The Ld. AR further submitted that in the year under consideration, Department of Excise, Government of Andhra Pradesh, vide G.O. dated 23.11.2005 allowed sub-leasing of capacity and IMFL manufacturing plants. In view of this new excise policy, JIL expressed desire to supply IMFL products directly to APBCL in Andhra Pradesh. In view of JIL's reluctance to allow all its brands name to be used by the assessee and in the absence of own saleable brands, coupled with non-availability of viable substitute, the assessee agreed for sub-licensing part of its licensed capacity to JIL. The assessee, accordingly, entered into a sub-licensing agreement dated 05.03.2007 with JIL whereby the assessee sub-licensed its capacity to the extent of 68.5 lacs PFL capacity to produce IMFL to JIL. The assessee, vide said agreement, also sub-leased part of its IMFL manufacturing facilities including building, plant and machinery and other equipments to JIL. Since the first sub license was granted by the excise authorities on 26.09.2006, therefore, in terms of Article - 1.2 of the said agreement, the effective date of agreement was 01.10.2006.

7. The Ld. AR further submitted that for full commercial exploitation of its expertise in various aspects of liquor manufacturing, the assessee also entered into another agreement dated 19.04.2007 with JIL for providing various services including complete bottling operations consisting of shifting of all materials, washing of bottles, filling/ capping, sealing, inspection at various stages, affixing of excise adhesive labels, labeling, overprinting of batch number etc. on the labels, packaging of filled bottles and shifting of IMFL cases to godown. It was also required to provide JIL with trained manpower and maintain bottling and washing machines as per separate packaging services

agreement entered into by both the parties.

8. The Ld. AR further submitted that the assessee was always engaged in the business of manufacture of IMFL. Under the new arrangement, the assessee still continued to carry on the same business, albeit in a varied form. As a result of the amendment in the excise policy of State of Andhra Pradesh, goods were manufactured and sold by JIL in its own name. Thus, turnover and profits belongs to JIL with the assessee receiving fixed monthly lease rent under sub-licensing agreement @ Rs. 10,00,000 per month and payment towards provision of packaging services at fixed rate of Rs. 23.85 per case from JIL in contrast with the earlier arrangement where although sales were made in the name of the assessee, the entire sale price was remitted to JIL after deducting fixed bottling charges and expenses incurred by the assessee. The Ld. AR pointed out that the business continued as such, i.e., manufacture and sale of IMFL products, although in form the goods were sold in the name of JIL. It would thus be evident that even after entering into the above agreements with JIL, there has been no change in the resolution of the assessee to carry on the business of IMFL considering that the assessee not only continued to be in control and possession of its IMFL manufacturing plant but also manufactured own IMFL products which were supplied to CSD. The details of sale made by the assessee of its own manufactured products were filed before the Assessing Officer. The Assessee purchased raw and packaging material for the manufacturing of its own products. The detail of raw and packaging material purchased, used and held as closing stock was filed before the Assessing Officer. The Assessee also continued to have power and water supply connection for industrial use. The Assessee continued to have registration under VAT, service tax etc. The Assessee continued to have its huge labour force required for carrying out various activities of manufacturing IMFL. The Assessee entered into an agreement, dated 14.03.2007, with the employees union for / retaining them and for providing them various allowances, facilities and amenities in the interest of its business. The Ld. AR thus, submitted that in view of the above and more particularly on perusal of the terms of the sub-licensing agreement and packaging services agreement, it

would be noted that the sole purpose of the assessee entering into such agreement(s) was to earn on its liquor business by using maximum benefit of capital invested in the commercial assets and to carry on business at lower financial cost. Being so, the receipts from JIL constitutes business income of the assessee.

9. The Ld. AR further submitted that the various Courts in the following decisions have held that rental income should be assessed as 'business income' where the business assets/facilities have been let out for commercial exploitation:

- CEPT v. Shri Lakshmi Silk Mills Limited: 20 ITR 451 (SC)
- CIT v. Vikram Cotton Mills Ltd.: 169 ITR 597 (SC)
- Universal Plast Ltd. & Ors. V. CIT: 237 ITR 454 (SC)
- Rajendra Flour & Allied Industries : 128 ITR 402 (Del.)
- CIT v. Northern India Iron and Steel Co. Ltd.: 211 ITR 370 (Del.)
- CIT v. Super Fine Cables Private Ltd.: 154 ITR 532 (Del.)
- CIT v. Mysore Wine Products Ltd.: ITA Nos. 408 to 410 of 2008 (Kar.)
- CIT v. Kohinoor Tobacco Products P. Ltd.: 283 ITR 162 (MP)
- CIT v. Anand Rubber and Plastics (P.) Ltd.: 178 ITR 301 (P&H)
- CIT v. Golden Engineering Works: 256 ITR 774 (P&H)
- CIT Vs. Malabar and Pioneer Hosiery (P.) Ltd. 221 ITR 117 (Ker.)
- CIT vs. Ajmera Industries Private Ltd.: 103 ITR 245 (Cal.)
- CIT v. K. Ramaiah & Ors.: 159 ITR 929 (AP)
- Coringa Co. Ltd. v. CIT: 62 ITR 523 (AP)

Besides the above mentioned decisions, the Ld. AR also relied upon the decision in reference to expenditure incurred for the purpose of business which are as follows:

- CIT vs. Malayalam Plantations Ltd. 53 ITR 140 (SC)
- CIT vs. Birla Cotton Spg. And Wvg. Mills Ltd. 82 ITR 166 (SC)
- Madhav Prasad Jatia vs. CIT 118 ITR 200 (SC)

- S. A. Builders Ltd. vs. CIT 288 ITR 1 (SC)

The Ld. AR also relied upon the following decisions in reference to reasonableness of expenditure to be seen from point of view of business:

- CIT vs. Walchand & Co. 65 ITR 381 (SC)
- J. K. Woollen Manufacturers vs. CIT 72 ITR 612 (SC)
- Aluminium Corpn. Of India Ltd. vs. CIT 86 ITR 11 (SC)

The Ld. AR submitted that the tests that have evolved for determining the nature of income derived from netting of assets on a distinguishing of the decisions referred hereinabove may be stated as under:

(i) no precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease amount, rents licence fee) received by an assessee from leasing or letting out of assets would fall under the head 'Profits and Gains of business or profession';

(ii) it is a mixed question of law and fact and has to be determined from the point of view of a businessman in that business on the facts and in the circumstances of each case including true interpretation of the agreement under which the assets are let out;

(iii) where all the assets of the business are let out, the period for which the assets are let out is a relevant factor to find out whether the intention of the assessee is to go out of business altogether or to come back and restart the same.

(iv) if only or a few of the business assets are let out temporarily while the assessee is carrying out his other business activities then it is a case of exploiting the business assets otherwise than employing them for his own use for making profit for that business; but if the business never started or has started but ceased with no intention to be resumed, the assets also will cease to be business assets and the transaction will only be exploitation of property

by an owner thereof, but not exploitation of business assets.

10. The Ld. AR further submitted that on application of the aforesaid decisions to the admitted facts of the present case, it will clearly be evident that:

- a) the assessee was engaged in the business of manufacture and sale of IMFL products since 1977;
- b) the assessee continued in the said business even after the agreement with JIL as applicable to the year under appeal;
- c) the business apparatus and infrastructure owned by the assessee was maintained and remained unchanged; and
- d) there was no intention to go out of business.

Thus, the Ld. AR submitted that in view of the matter, the amounts received from commercially letting of business assets had to be treated as business income and not as 'income from other sources', as taken by the lower authorities.

11. As relates to Principle of consistency, the Ld. AR submitted that the sub-license agreement was effective from 01.10.2006 and the assessee had received monthly fixed income from sub-licensing activity for the period 01.10.2006 to 31.03.2007, which was also offered to tax as 'business income' while filing the return of income for the A.Y. 2007-08. The Assessing Officer, while passing the order under section 143(3) of the Act specifically noted this aspect of receipt of lease rentals and assessed the same as business income. Being so, since the facts of the year under consideration remains the same as that of A.Y. 2007-08, the Ld. AR submitted that applying the rule of consistency, income from sub-licensing of licensed capacity and income from packaging services should be continued to be taxed under the head "business". The Ld. AR referred to decision in case of CIT v. Excel Industries Ltd.: 358 ITR 295 (SC).

12. As relates to the case-laws relied upon by the lower authorities, the Ld. AR submitted that the lower authorities have primarily relied upon the following decisions of the Hon'ble Apex Court:

- New Savan Sugar & Gur Refinig Company Ltd.: 74 ITR 7
- Universal Plast Ltd.: 237 ITR 454

The Ld. AR submitted that in the above cases relied upon by the lower authorities, unequivocal finding recorded was that the assessee had parted with its commercial assets in favour of the lessee and there was no intention to resume business. On the basis of the aforesaid, the Court in the above referred cases held the income of letting out of the asset to be taxed as "income from other sources". Since the intention of the assessee in those cases was to go out of the business permanently, the aforesaid decisions being distinguishable on facts have, thus, no application to the case of the assessee.

13. The Ld. AR relating to allowance of expenses submitted that during the year under consideration, the assessee incurred personnel expenses amounting to Rs. 1,32,38,146 and administrative & selling expenses amounting to Rs. 79.58,872. There is no dispute regarding the genuineness of the above expenses. These expenses were incurred for running the business operations of the assessee including various packaging services provided to JIL. Entire expenses were incurred wholly and exclusively to earn the business income. Salary and wages including PF, ESI, Bonus etc. were paid to labour and the executives of the assessee working for last many years with the assessee. Similarly, administrative and selling expenses were incurred for running the day-to-day business operations of the assessee company. Being so such expenditure are allowable as business expenditure under section 37(1) of the Act, as allowed in earlier years. The Ld. AR further submitted that even if it is assumed for the sake of argument, though not conceding, that such receipts are to be taxed as 'income from other sources', then, too, deduction under section 57 (iii) of the Act should be allowed in respect of the expenses incurred

by the assessee for earning such income. In the facts of the present case, the Assessing Officer, at page-7 of the Assessment Order, admitted that the above expenses are attributable to income assessable under the head "income from other sources". Being so, the above personnel expenses and administrative & selling expenses, having been incurred by the assessee for earning income by way of lease rent, from provision of packaging services to JIL and carrying out its own manufacturing and business activities, should be allowed as deduction in toto under section 37(1) as also under section 57(iii) of the Act. The Ld. AR relied upon the Hon'ble Apex Court decision in case of CIT vs. Rejendra Prasad Moody 115 ITR 519 (SC).

14. The Ld. AR relating to Marketing expenses of Rs.37,47,447 paid to Mr. J. Jaiswal, submitted that during the year under consideration, the assessee had paid marketing expenses of Rs.37,47,447 to Mr. J. Jaiswal. As stated above, the assessee company had earned majority of revenue, during the year under consideration, from JIL which is a Delhi based company, being so, services of Mr. J. Jaiswal, one of the senior employee of the assessee, stationed at Delhi was looking after the business affairs of the assessee. Besides that, the assessee took prudent business decision to continue the services of Mr. J. Jaiswal, who was having more than 40 years of experience in the various aspects of liquor business. Being so, such expenditure incurred by the assessee are fully allowable under the provisions of section 37(1) of the Act. It is further submitted that similar payment were made to Mr. J. Jaiswal in the earlier years as well, which were duly allowed by the Department.

15. The Ld. DR submitted **in respect of Ground No. 1 relating to income of Rs 1,20,00,000/- from sub-leasing, that** the assessee in the year under consideration has sub-leased its manufacturing unit to M/s Jagatjit Industries Limited ("JIL"). The receipts from such activity were treated as Business Income by the assessee. The Ld. DR submitted that based on various court rulings and the facts of the case, the Assessing Officer has given a finding that

the assessee intends to lease out the Unit on a continuous basis and hence, the same should be treated as Income from Other Sources. The CIT (A) has concurred with the finding of the Assessing Officer. The Ld. DR submitted that before the Tribunal, the assessee argued that it has no intention of going out of the business and hence the income should be treated as Income from Business and profession. Several case laws have been relied upon, but from the perusal of the agreement it can be seen that the assessee has leased out its "factory" to JIL which includes factory, building, ancillary buildings, land appurtenant thereto, Plant and Machinery and equipments, production area, storage area. The lease is for 3 years. JIL has to pay all taxes of the local bodies, electricity/ water bills etc. The assessee has also obtained sub-license of its excise license in favor of JIL. In effect, the assessee has let out machinery, plant or furniture and also building. These components are inextricably linked and thus composite in nature. Thus, the Ld. DR submitted that it is taxable as "Income from other sources". This is further evident from the facts that the intention while making the lease was that the assets leased- building and plant and machinery etc are enjoyed together. The assets could not be leased out separately as the purpose of leasing out was to allow JIL to carry out its business operations. The Ld. DR also pointed out that the lessee would not accept the lease of the one without the other asset. Hence, the Ld. DR submitted that the income received by the assessee on this account clearly falls under the ambit of income from other sources. The judgments relied upon by the assessee are clearly distinguishable on facts. In all the cases cited, the taxpayers were faced with compelling unfavorable circumstances which led to their discontinuing the business for some time. In taxpayers on account of temporary hiring out of their assets have been treated as business income. In the case under consideration, the intention of the assessee to get back into the business of manufacture of IMFL is not manifest in its conduct. The Ld. DR pointed out that the transaction of hiring out the Unit was executed without any compelling reason which could have forced the assessee to resort to such measure. The lease agreement has been renewed in subsequent years after the

initial period of 3 years. The assessee has retained a very minuscule part (only 2%) of the manufacturing facility. This appears to be only done to retain colour of running its own business while in reality it has drastically reduced its production with no intention to revive. Had the assessee retained substantial portion of the facility for own use while letting out a part of it, the inference could have been different. The change in the composition of its revenues vis a vis last year is as follows:

Head	2007-08	2006-07
Sales	1162968 (3.4%)	577619621
Factory Lease Rent	12000000 (35.5%)	600000 (0.1%)
Packaging Services	12777784 (37.8%)	0
Resale of Raw and	6362660(18.8%)	0
Other Income	1491903 (4.4%)	1499744 (0.25%)
Total	33795315 (100%)	579719365(100%)

This shows that the assessee is withdrawing from the business of manufacture which is its main business without any compelling/ unfavorable circumstance/s. It appears to be conscious decision of the assessee to not be engaged in manufacturing, thereby reducing the risk component, and derive income from passive sources like letting out of manufacturing facility. Intention is an inference drawn from relevant facts. The facts in this case point that the assessee has exited from its normal business of manufacture of IMFL and has let out the Unit/ assets and enjoy the proceeds from this letting out as owner of property. The income so received must be treated as Income from Other Sources.

16. In respect of Ground No. 2 regarding income of Rs 1,27,77,784/- from Packaging Services, the Ld. DR submitted that the assessee in the year under consideration has rendered packaging services to JIL. The assessee treated such activity as Business Income. The Assessing Officer has given a

finding that this activity has nothing to do with the regular business of the assessee, and hence, the same should be treated as Income from Other Sources. The CIT (A) has concurred with the finding of the Assessing Officer. Before the Tribunal, the assessee has argued that these concurrent findings be reversed. In this connection, the Ld. DR submitted that to be characterized as business income, there should be a connection between any income received and the regular business of the assessee. A connection exists if it is clear that the payment of income would not have been made if the business did not exist. In the current case under consideration, the packaging services are not the regular business of the assessee. Hence, there cannot said to be a connection between the income and its regular business.

17. **In respect of Ground No. 3 regarding income of Rs 63, 62,660/- from Resale of packaging and raw materials, the Ld. DR submitted that** the assessee in the year under consideration has transferred raw and packaging material left with it subsequent to leasing out of licensed capacity. The receipts from such activity were treated as Business Income by the assessee. The Assessing Officer has given a finding that this activity has nothing to do with the regular business of the assessee, and hence, the same should be treated as Income from Other Sources. The CIT (A) has concurred with the finding of the Assessing Officer. Before the Tribunal, the assessee has argued that these concurrent findings be reversed. In this connection it is submitted that that to be characterized as business income, there should be a connection between any income received and the regular business of the assessee. A connection exists if it is clear that the payment of income would not have been made if the business did not exist. In the current case under consideration, the resale of these materials took place because these items were left over after the leasing out of the facility. Hence, there cannot said to be a connection between the income and its regular business.

18. **In respect of Ground No. 4 & 4.1 regarding allowance of deduction u/s 57 (iii), the Ld. DR submitted that** Clause (iii) to section 57 allows the

deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income (income chargeable under the head “income from other sources”). The Ld. DR pointed out that the distinction in the language used by the legislature in section 37(1) of the Act and 57(iii) of the Act. The Ld. DR submitted that Section 37 provides for deduction of expenditure incurred wholly and exclusively “for the purpose of business” whereas section 57(iii) provides for deduction only of expenditure incurred wholly and exclusively “for the purpose of making or earning such income”. “Such income” refers to “income from other sources”. The scope of expression “for the purpose of business” is different than the expression “for the purpose of making or earning such income”. Thus, the Ld. DR submitted that expenditure may be admissible under section 57(iii) and it is necessary that the primary motive of incurring it directly to earn income falling under the head “income from other sources”. That is not so under section 37 which allows deduction of expenditure; incurred wholly and exclusively” for the purpose of the business”. Under section 57(iii), deduction will not be allowed if the expenditure is not incurred for the purpose of earning income falling under the head “income from other sources” The assessee could not establish the specific expenses incurred for earning the income from other sources.

19. In respect of Ground No. 5 regarding the proportionate disallowance of expenses, the Ld. DR submitted that in absence of any details from the assessee in respect of specific expense incurred for earning income from other sources, only proportionate expenses were allowed against the revenue from sales.

20. In respect of Ground No. 6 and 6.1 regarding the disallowance of Marketing and welfare expense of Rs 37,47,447/-, the Ld. DR submitted that the assessee could not establish the commercial expediency of making such payments to Sh Jagatjit Jaiswal in view of the fact that the sales of the

company had reduced drastically since leasing out of manufacturing unit. Further, the sales were made to a single party that is CSD. That the payment was incurred for the purpose of business has not been proved by the assessee.

21. In respect of Rule of Consistency, the Ld. DR submitted that the principle of Res judicata is not applicable to the income tax proceedings. Assessment has to be made based on facts of each year. The facts and circumstances of the case under consideration have undergone change vis-à-vis last year.

22. We have heard both the parties and perused all the relevant material available on record at the time of hearing. As relates to Ground No1 and 1.1, as per the submissions of the Ld. AR and from the record, the fact which emerges that the assessee was always engaged in the business of manufacturing of Indian made foreign liquor for which the assessee holds valid license for manufacturing which is renewed on early basis by the Excise Department of Government of State of Andhra Pradesh. Under the terms of the prevalent Excise Policy, the license holder alone can sale Indian made foreign liquor products to Andhra Pradesh Beverages Corporation Ltd.. Though the assessee had both license capacity and manufacturing facility for Indian made foreign liquor, the assessee did not own any popular brand for Indian made foreign liquor. Therefore, the assessee entered into royalty based on profit sharing agreement with M/s Jagatjit Industries Ltd. for carrying on its business activities since 1977. At the initial years, the terms of these agreements was that the assessee will manufacture Indian made foreign liquor using the brands owned by M/s Jagatjit Industries Ltd. The assessee paid royalty to M/s Jagatjit Industries Ltd. Thus, the assessee was supplying Indian made foreign liquor products directly to the Andhra Pradesh Beverages Corporation Ltd in the brand name M/s Jagatjit Industries Ltd. This arrangement continued till 30th September 2006 and sales considerations received by the assessee was

remitted to M/s Jagatjit Industries Ltd. after deducting fixed bottling charges and expenses incurred by the assessee. From the records it can be seen that the Department of Excise, Government of Andhra Pradesh vide government order dated 23/11/2005 allowed sub leasing of capacity and Indian made foreign liquor manufacturing plants. In view of this new excise policy, M/s Jagatjit Industries Ltd. was keen to supply Indian made foreign liquor products directly to Andhra Pradesh Beverages Corporation Ltd. in state of Andhra Pradesh. In view of this new policy M/s Jagatjit Industries Ltd. was not allowing to use its brand name by the assessee and in the absence of own saleable brands or any other substitute, the assessee agreed for sub licensee for part of its license capacity to M/s Jagatjit Industries Ltd. Accordingly, the assessee entered into a sub licensee agreement dated 5/3/2007 with M/s Jagatjit Industries Ltd. whereby the assessee sub license its capacity of manufacturing to the extent of 68.5 lacs proof liters to produce Indian made foreign liquor to M/s Jagatjit Industries Ltd. Vide said agreement, the assessee also sub lease part of its Indian made foreign liquor manufacturing facilities including building, plant and machinery and other equipments to M/s Jagatjit Industries Ltd. Since the first sub license was granted by the Excise authorities on 26/9/2006, therefore, in terms of Article 1.2 of the said agreement, the effective date of the agreement was 1/10/2006. Further, from the documents it can be seen that for full commercial exploitation of the assessee's expertise in various aspect of liquor manufacturing, the assessee entered into another agreement dated 19/4/2007 with M/s Jagatjit Industries Ltd. for providing various services including complete bottling operation consisting of shifting of all materials, washing of bottles filling/ capping, sealing, inception at various stages, affixing of Excise adhesive, labels over providing of batch number etc, labels, packaging of filling bottles and shifting of Indian made foreign liquor cases to godown. Thus, the assessee through this agreement also provided M/s Jagatjit Industries Ltd. trained manpower and maintaining of bottling and washing machine at separate packing services. From the records, it will be seen that the business of the assessee continued as

earlier was done by the assessee regarding manufacturing of Indian made foreign liquor as well as sale of those products and the same was sold in the name of M/s Jagatjit Industries Ltd. It was only the part of the manufacturing unit of the assessee through the proper agreement was given to the entity M/s Jagatjit Industries Ltd. at Rs. 10,00,000/- per month and payments were provided for packaging services at a fixed rate of Rs.23.85 per case. The rest of the terms as prior to the Government Order of the state of Andhra Pradesh dated 23/11/2005 remains the same. Therefore, the nature of the business of the assessee was never changed as well as the income derived by the assessee is specifically from the manufacturing of liquor activity. Therefore, the Assessing Officer while observing that the assessee has only leased out the unit on a continuous basis and inferring that the assessee is no more doing a business of manufacturing of Indian made foreign liquor is not correct as per the records available before the Assessment Proceedings. Thus, the Assessing Officer and the CIT(A) has not taken a proper perspective of the business income in the context of Income Tax Act. The reliance on the decision of Mysore Wine Products Ltd. (Supra) by Hon'ble Karnataka High Court supports the case of the assessee. In-fact, the Hon'ble Supreme Court in case of Shri Laxmi Silk Mills Ltd. also held that the yield of income by a commercial asset is the profit of the business irrespective of the manner in which that asset is exploited by the owner of the business. The Hon'ble Apex Court further held that the owner is entitled to exploit to his best advantage and he may do so either by using it himself personally or by letting it out to somebody else. The Ld. DR's contentions that the assessee intends to lease out the Unit on a continuous basis and hence, the same should be treated as Income from Other Sources appears to be incorrect as the manufacturing activity of the assessee is going on till date. Thus, case laws relied upon by the Ld. DR as well as the ratio applied by the CIT(A) and Assessing Officer of various decisions does not apply as in those cases the manufacturing activities were not continued. Thus, Ground No. 1 and 1.1 of the assessee's appeal is allowed.

23. As relates to Ground No. 2, since the income from packaging services amounting to Rs. 1,27,77,784 is a business income which is based on the packaging agreement between assessee and M/s Jagatjit Industries Ltd. The assessee has not given up at any point of time its own manufacturing activities but was facilitating M/s Jagatjit Industries Ltd. for the benefit of assessee's own business. Therefore, Assessing Officer as well as the CIT(A) was not correct in disallowing packaging services to the assess by holding that it is 'income from other sources'. Ground No. 2 of the Assessee's appeal is allowed.

24. As relating to Ground No. 3, income from resale of raw and packing material amounting to Rs. 63,62,660/-, the same is also business income as the raw and packing material belongs to the assessee irrespective of whether it is used for the manufacturing activities conducted by the assessee or not. Thus, the same is part and parcel of the business activity of the assessee. Therefore, Assessing Officer as well as the CIT(A) was not correct in disallowing this by holding that it is "income from other sources." Ground No. 3 of the Assessee's appeal is allowed.

25. As relates to Ground No. 4, 4.1 and 5 in the paras herein above we have given a finding that the activities carried out by sub-leasing, packaging and resale of raw material & packing material is a business activity and income derived from the same is business income. During the year under consideration, the assessee incurred personnel expenses amounting to Rs. 1,32,38,146 and administrative & selling expenses amounting to Rs. 79,58,872. There is no dispute regarding the genuineness of the above expenses by the Assessing Officer. These expenses were incurred for running the business operations of the assessee including various packaging services provided to M/s. Jagatjit Industries Ltd.. Entire expenses were incurred wholly and exclusively to earn the business income. Salary and wages including PF, ESI, Bonus etc. were paid to labour and the executives of the assessee working for last many years with the assessee. Similarly, administrative and selling

expenses were incurred for running the day-to-day business operations of the assessee company. Being so such expenditure are allowable as business expenditure under section 37(1) of the Act, as allowed in earlier years. Thus, the personnel expenses and administrative & selling expenses, having been incurred by the assessee for earning income by way of lease rent, from provision of packaging services to M/s Jagatjit Industries Limited and carrying out its own manufacturing and business activities, should be allowed as deduction as per section 37(1) as also under section 57(iii) of the Act. The reliance upon the Hon'ble Apex Court decision in case of Rejendra Prasad Moody (supra) is applicable in the present case. Therefore, Ground No. 4, 4.1 and 5 of the assessee's appeal are allowed.

26. As regards to Ground No. 6, the marketing expenses of Rs. 37,47,447 was paid to Mr. J. Jaiswal who is senior employee of the assessee company stationed at Delhi as well as experienced personnel in liquor business and was looking for the business affairs of the assessee company in respect of the Delhi based company M/s. Jagatjit Industries Ltd. Thus, the expenditure incurred by the assessee is allowable under the provisions of Section 37(1) of the Act. Ground No. 6 of the assessee's appeal is allowed.

27. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 12th July, 2018.

Sd/-

(P. M. JAGTAP)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 12/07/2018
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	09.07.2018
Date on which the typed draft is placed before the dictating Member	09.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	12.07.2018
Date on which the final order is uploaded on the website of ITAT	12.07.2018
Date on which the file goes to the Bench Clerk	12.07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	