

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI

Before Shri R C Sharma, Accountant Member &
Shri Sandeep Gosain, Judicial Member

ITA No.2849/Mum/2015
Assessment Year : 2010-11

Hercules Industrial Chemicals P Ltd Merged with Ashland India P. Ltd., 601, 606-608, Platinum Technopark, Plot No.17-18, Sec 30A, Vashi, Navi Mumbai – 400 705 PAN AABCH3827Q (Appellant)	Vs.	ACIT 10(3) Mumbai (Respondent)
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Appellant By : Shri Ketan Ved (AR)
Respondent By : Shri M C Omi Ningshen (DR)

Date of Hearing : 10.04.2018	Date of Pronouncement : 06.07.2018
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ORDER

Per R C Sharma, Accountant Member:

This appeal has been filed by the assessee against the order of the CIT(A) for A.Y. 2010-11 in the matter of order passed by the Assessing Officer u/s. 143(3) of the Income tax Act, 1961.

2. In the appeal the assessee is aggrieved for disallowance of expenditure incurred on account of royalty expenses, employee cost and travelling expenses. The Assessing Officer had discussed the issue in para 4.1 to 4.3 of the assessment order. The assessee is engaged in the business of providing technical know-how for manufacturing commercial products related to pulp and paper products. During the year it had declared royalty income of Rs. 2.25 crores, Service income at Rs. 2,01,49,909/- and other income of

Rs.3,33,0307- and had computed net loss of Rs. 1.26 crores. The royalty income was mainly derived on account of providing technical know-how which was purchased from-the holding company M/s Hercules Inc., U.S. As per agreement dated 01.01.2003 the assessee needs to pay royalty of 5% on net sale value of the product sold apart from a wholesome amount of US\$ 20,00,000 spread over a period of 10 years. The assessee had entered into a service agreement dated 01.07.2007 with M/s Hercules Asia Pacific Shanghai Regional Company Ltd. and as per the agreement the appellant needs to receive service fee at cost plus 5%, The Assessing Officer noticed that the service income offered during the year was Rs. 2,01,49,909/- and in his view the cost attributable to the service income is Rs. 1,91,90,389/-. The assessee claimed expenses of Rs.2.36 crores towards employee cost and Rs. 62.16 lacs under traveling, totally amounting to Rs. 2.98 crores against the cost attributable to the service income of Rs. 1.91 crores.

3. By observing that in earlier years also similar disallowance was made by the Assessing Officer, he disallowed Rs. 31,65,848/- on account of royalty expenditure and Rs. 1,06,63,702/- on account of employee cost and travelling expenses. By the impugned order, the learned CIT(A) confirmed the action of the Assessing Officer.

4. The learned AR placed on record the order of the Tribunal, dated 29.03.2017, in its own case for A.Ys 2009-10, wherein exactly similar issue was decided in favour of the assessee by observing as under:

"12. We have heard the rival contention of both the parties looking to the facts of the case we find that similar addition was made in AY 2008-09 by the AO has disallowed the royalty income of Rs.23,66,000/- and when the matter travelled to CIT(A) and CIT(A) has deleted this addition by observing as under:

6. *"I have gone through the Remand report and also the submissions made by the appellant. It is seen that the appellant has entered into original agreement in the year 2003 and the subsequent amendments were entered into in the year 2005 which has been placed on record. The said agreements clearly states that on products Hercon and £55, royalty is 5% and for other products it is 14%. Regarding the ?ments not being registered, I agree with the appellant's contention that registration of the agreement is not necessary and the amendment agreement was entered into in the year 2005 which clearly stipulates the change in royalty percentage. Hence, disallowance made "on royalty income of Rs.23,66,000/- is deleted. Moreover, the A.O's observation in the Remand report that the excess expenditure incurred is service charges comprising of travelling expenses is in contravention of the agreements is not understood in the proper perspective and the same is not tenable. This ground of appeal is allowed."*

13. *Moreover the Tribunal in ITA No. 4380/M/2013 has dismissed the appeal of the department by observing as under:*

8. *Before us, the Ld. A.R. of the assessee submitted that since the above stated product 'Hercon and Impress' were newly added products and that it was a commercial decision of the assessee company to sell the said products on no profit basis so as to attract more customers. It has also been submitted that in the subsequent assessment year 2011-12, the parent company i.e. M/s. Hercules INC, USA has waived off the entire royalty payable by the assessee and that the assessee has not paid any royalty to the parent company and the entire amount has been offered to tax by the assessee company for A. Y. 2011-12. It has, therefore, been contended that the disallowance made for the assessment year under consideration would result in double taxation of the same income.*

9. *Considering the above contentions, we do not find any in the order of the Ld. CIT(A) while deleting the of royalty expenditure. The appeal of the Revenue is therefore dismissed.*

14. We respectfully following the order of the Tribunal the facts of this case in this year is relating to the royalty income. In this year the original agreement entered in 2003 and subsequent amendment was entered into the year 2005. The said agreement clearly stated that on product Hercon and Impress Royalty is 5% and for the other product it is 14%. The similar disallowance is made in the year under consideration. Therefore, we respectfully following the decision of the assessee's own case we allow the appeal of the assessee."

5. We have carefully gone through the orders of the authorities below as well as the order of the Tribunal in the assessee's own case and find that under similar facts and circumstances expenditure on account of Royalty expenses, employee cost and travelling cost was allowed by the Tribunal. As the facts and circumstances for the year under appeal are identical, respectfully following the order of the Tribunal we direct the Assessing Officer to allow the claim of the assessee.

6. The next grievance of the assessee relates to disallowance of professional fees of Rs. 12,70,440/-. We find that professional fees so disallowed by the Assessing Officer was confirmed by the CIT(A) by observing that similar issue was dealt by him in the immediately preceding year. Accordingly CIT(A) dismissed the ground raised by assessee.

7. We have gone through the order of CIT(A) of the preceding year and find that professional fees was allowed in favour of the assessee. In all fairness we restore the matter to the file of the CIT(A) for verifying the facts and pass speaking order with regard to the allowance of professional fees. We direct accordingly.

8. In the result, the appeal is allowed in part in the terms indicated above.

Order pronounced in the open court on 6th July, 2018.

Sd/-

(Sandeep Gosain)

JUDICIAL MEMBER

Mumbai; Dated: 6th July, 2018

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Sd/-

(R C Sharma)

ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'H' Bench, ITAT, Mumbai

BY ORDER,

#True Copy #

Assistant Registrar
Income Tax Appellate Tribunal, Mumbai