

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

**BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

ITA No. 4451/Del/2014

AY: 2010-11

&

ITA No. 827/Del/2016

AY: 2011-12

Dy.CIT, Circle 1 Aayakar Bhawan A-2/D, Sector 24 Noida 201 301	vs.	M/s Jubilant Chemsys Ltd., Plot No.1-A, Sector 16A Noida 201 301 PAN: AABCJ4392G
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ITA No. 4276/Del/2015

AY: 2010-11

ITO, Ward 1(5) Aayakar Bhawan A-2D, Sector 24 Noida	vs.	M/s Jubilant Biosys Ltd., 1-A, Sector 16A Noida 201 301 PAN: AAACJ9445P
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(Appellant)

(Respondent)

Department by : Smt. Meeta Singh, CIT, D.R.

Assessee by : Sh. K.M.Gupta, Adv. And
Sh. Rishabh Malhotra, AR.

Date of Hearing : 10.09.2018

Date of Pronouncement: 12.09.2018

ORDER

PER BENCH

Present appeals have been filed by revenue against following orders passed by Ld.CIT (A), New Delhi for assessment year 2010-11, 2011-12 as under:

S.No.	Asst. year	Assessee	Order passed by
1	2010-11	Jubilant Chemsys Ltd.,	CIT(A), Noida order dated 19.05.2014
2.	2010-11	Jubilant Biosys Ltd.,	CIT(A), Noida order dated 30.04.2015
3.	2011-12	Jubilant Chemsys Ltd.,	CIT(A)-I, Noida order dated 01.06.2015

These appeals filed by revenue in respect of two different assessees connected with each other for assessment year 2010-11 and 2011-12. The issue of disallowance in these appeals challenged by revenue are in respect of deduction under section 80 IB (8A) of Income Tax Act, 1961 (the Act) claimed by assessee.

2. For the sake of convenience we shall take up **ITA No.4276/Del/2014, in case of Jubilant Biosys Ltd.**

Brief facts of the case are as under:

Ld. AO observed that during the year under consideration Jubilant Biosys Ltd., was running into losses and Jubilant Chemsys Ltd., had declared huge profits that was claimed as deduction under section 80 IB (8A) of the Act.

2.1. Ld.AO observed that during the year under consideration Jubilant Biosys Ltd., had a contract with M/s. Eli Lilly and Co, USA. Jubilant Biosys Ltd., had entered into separate contract with Jubilant Chemsys Ltd., for rendering of services to M/s. Eli Lilly and Co. Ld.AO observed that contract entered into by Jubilant Biosys Ltd with its sister concern, Jubilant Chemsys Ltd., was for rendering services to M/s. Eli Lilly and Co. and

payment of research fee amounting to Rs.11,13,28,400/-has been made by Jubilant Biosys Ltd., to Jubilant Chemsys Ltd.

2.2. It was also observed by Ld.AO that Jubilant Chemsys Ltd., also rendered research services to M/s. Eli Lilly and Co., for which fees amounting to Rs.24,54,35,045/- was received.

2.3. Ld.AO thus arrived at a conclusion that the sub-contract entered into by Jubilant Biosys Ltd., with its sister concern, Jubilant Chemsys Ltd., for the contract given by M/s. Eli Lilly and Co are being diverted to a concern which is showing profits and claiming deduction under section 80 (IB) (8A) of the Act rather than showing the income in the hands of Jubilant Biosys Ltd., which is running in losses. Ld.AO therefore, taking into consideration, provisions of section 80 IB (13) read with section 80 IA (10) of the Act, held that business between both sister concerns were so arranged that, transaction had an effect of producing more profit in the hands of Jubilant Chemsys Ltd., than ordinary profits. He therefore made an addition of Rs.9,39,95,253/-in the hands of Jubilant Biosys Ltd.

3. Aggrieved by the order of Ld.AO, assessee preferred appeal before Ld.CIT(A) who deleted the addition by placing reliance upon his own order in appellant's own case for preceding assessment year being 2009-10.

4. Aggrieved by the order of Ld.CIT(A), revenue is in appeal before us now.

5. Upon perusal of appeals before us, in case of Jubilant Biosys Ltd., and Jubilant Chemsys Ltd., it is observed that these are common issues based upon identical facts & circumstances.

6. At the outset Ld.Counsel submitted that identical issues on similar facts and circumstances on the basis of same agreement, has been decided by this Tribunal in assessee's own case for Assessment Year 2008-09 and 2009-10 vide order dated 27/07/18 in ITA No.3464-3465/Del/2014 and 3466-3467/Del/2014, a copy of which is placed before us.

6.1. Ld. CIT, DR though opposed to the submissions advanced by Ld.Counsel, however, could not controvert the fact that issue decided by this Tribunal in assessee's own case for immediately preceding Assessment Year, were on identical facts and circumstances.

7. We have perused submissions and rival contentions of both sides, based upon records placed before us. We have also perused order passed by this Tribunal in assessee's own case for Assessment Years 2008-09 and 2009-10 (supra).

7.1. It has also been observed that agreement based upon which services has been rendered by Jubilant Biosys Ltd., to Jubilant Chemsys Ltd., are also same. On perusal of assessment orders and records for immediately preceding assessment years placed in paper book before us, it is observed that Assessing Officer has made identical addition in hands of both assessees, on similar facts and circumstances. We, therefore, do not find any reason to deviate from the view taken by this Tribunal vide order dated 27.07.2018 in assessee's own case for Assessment Years 2008-09 and 2009-10 (supra). On careful perusal of the order passed by this Tribunal, it is observed that the issue has been decided by observing as under:

“6. A careful circumspection of the above provision deciphers that the Assessing Officer can discard the profit declared by an eligible assessee for the purposes of deduction under this section and adopt the amount of profit as he considers reasonable, if he finds that the course of business between two closely connected assesseees has been so arranged which 'produces to the assessee more than ordinary profits which might be expected to arise in such eligible business. Thus, it is evident that a mere close connection between the two assesseees is not conclusive for invoking the provisions of section 80IB(13) read with section 80IA(10). Rather, it is simply a starting point for unfolding if the assessee has shown more than normal profits in its hands so as to claim higher amount of deduction. The Assessing Officer is enabled to abandon the profit declared by the assessee and substitute it with a reasonable profit only on demonstrating that the arrangement between the two assesseees is such that the assessee claiming deduction has been shown to have earned 'more than the ordinary profits which might be expected to arise in such eligible business. It is, therefore, essential that the Assessing Officer must first positively illustrate that the profit declared by the assessee from the transaction with its connected concern is more than the one ordinarily earned from such transactions. The expression 'more than the ordinary profits' is a relative term which needs to be depicted with reference to the ordinary profits. If ordinary profit from a transaction is Rs.100/-, but, an assessee has shown to have earned profit of Rs.110/- from such transaction because of its connection with, the other enterprise, then, it is the excess of Rs. 10/-, which can be disallowed. Ergo, in any event, the Assessing

Officer needs to bring on record some material to indicate ordinary profit, which is then compared with the profit declared by the assessee resulting from its transactions with the connected assessee so as to trigger this provision.

7. When we advert to the facts of the instant case, it turns out that the Assessing Officer simply invoked the provisions of section 80IA(10) and disallowed deduction for the entire receipt of Rs.2.32 crore, without showing in any manner the ordinary profit which might have resulted if there had been no connection between the assessee and JB. Page 67 of the paper book is a copy of invoice raised by the assessee on JB. This invoice is dated 31.05.2007. The description given in the invoice is '(P035) FTE Charges for service provided by 32 FTEs.' The unit rate has been given as USD 1 lac at page 133 of the paper book is another invoice which the assessee raised on Eli Lilly & Co., USA. Description given in the invoice is '(P035) FTE Charges for service provided by 32 FTEs' for USD 4166.6563 per unit and total of 1,33,333 USD.' In addition, there is another amount in the later invoice with the description 'Cost of chemicals" at USD 77446. Thus, it is manifest that the total invoice value which the assessee raised on Eli Lilly & Co., USA, is for USD 2,10,779. Unlike 'cost of chemicals' received by the assessee from Eli Lilly & Co., which is in the nature of reimbursement, there is no corresponding amount in the invoice raised by the assessee on JB towards Reimbursement of cost of chemicals. The Id. CIT(A) has recorded on page 13 of the impugned order that the assessee also received 'Reimbursement for cost of chemicals' amounting to Rs.93,99,256/- from JB in relation to the Invoice raised on it. This finding has not been controverted by

the Id. DR. Thus, in all, the assessee received Rs.3.27 crore from JB which comprises of Rs.2.32 crore towards Medicinal Chemistry Research services and Rs.93.99 lac towards 'reimbursement of cost of chemicals'. In percentage terms, reimbursement for chemicals constituted roughly 28% of the invoice which the assessee raised on JB and such percentage is 36% in the invoice raised by the assessee on Eli Lilly & Co., USA. If reimbursement on account of chemicals is removed from both the sets of invoices, what remains is that the assessee charged 1 lac USD from IB and for similar work, it charged ' 1,33,333 USD from Eli Lilly & Co., USA. Thus, it is proved that the rate charged by the assessee from JB for similar work is lower than the rate charged by it from Eli Lilly & Co., USA. In other words, the assessee has earned lower income from JB than it earned ordinarily from unrelated parties.

8. When we again come back to section 80IA(10), which has been invoked by the Assessing Officer, the tables get turned in the sense that the income earned by the assessee from its connected company, namely, JB is less than the ordinary profits, being, the amount charged by the assessee from Eli Lilly & Co., USA. Under these circumstances, it becomes evident that the provisions of section 80IA(10) are not triggered. If we ignore this aspect, there is nothing in the assessment order to substantiate the claim of the Revenue that the assessee charged exorbitantly from JB so as to divert income from loss making JB to the assessee so as to enable it to claim higher deduction. In our considered opinion, that the Ld.CIT(A) took an unimpeachable view on the issue by deleting the addition of Rs.2.32 crore made by the Assessing Officer.

9. *In so far as the appeal of the Jubilant Biosys Ltd., is concerned, the grievance of the Revenue is to the effect that the Id. CIT(A) erred in allowing expenditure of Rs.2.32 crore for which payment was made to JC. The Assessing Officer, vide his order dated 29.12.2010 referred to the facts noted in the case of JC. Here also, he reproduced section 80IB(13) read with section 80IA(10) and, eventually, laid down that the course of business was arranged between JB and JC in such a way so as to produce more than ordinary profit in the hands of JC. He, therefore, disallowed payment made by the assessee to JC amounting to Rs.2.32 crore. The Id. CIT(A) deleted the addition.*

10. *In view of our findings given in the case of JC by which we have upheld the impugned order in deleting the addition of Rs.2.32 crore, the consequential effect in the instant appeal is that such an expenditure has to be allowed as deduction in the hands of JB. We, therefore, uphold the impugned order.*

11. *In the result, both the appeals are dismissed.”*

7.2. On the basis of the above discussion and similarity of the facts for the year under consideration, with that of immediately preceding assessment year in case of assessee before us, we hold that no infirmity could be found in the decision of Ld. CIT (A) and the same is upheld.

8. Accordingly the ground raised by revenue in ITA No.4276/Del/2014 stands dismissed.

9. ITA No. 4451/Del/2014 (Assessment Year 2010-11) and ITA No. 827/Del/2016 (Assessment Year 2011-12)

It is observed that facts and circumstances of these cases are similar and identical to the facts in ITA No.4276/Del/2014.

Accordingly identical arguments raised hereinabove by both the sides are adopted for these appeals also. In view of the discussion for ITA No. 4276/Del/2014, we uphold the orders of Ld. CIT (A).

10. Accordingly the grounds raised by revenue in ITA No. 4451/Del/2014 and ITA No. 827/Del/2016 stand dismissed.

11. In the result the appeals filed by revenue stand dismissed.

Order pronounced in the Open Court on 12.09.2018.

Sd/-

(N.K.SAINI)
ACCOUNTANTMEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 12/09/ 2018

- Gmv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

S.No.	Details	Date
1	Draft dictated on Dragon	12/09/18
2	Draft placed before author	12/09/18
3	Draft proposed & placed before the Second Member	
4	Draft discussed/ approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	