

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ -“ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 427 & 428/CHD/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s Altruist Technologies Private Ltd., 4 th Floor, Behind Hotel Firhill, Near Tunnel No.103, Shimla	बनाम	The DCIT, Circle, Parwanoo
स्थायी लेखा सं./PAN NO: AAFCA3725N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
<i>(Appeal against the order of CIT(A), Shimla dated 21/03/2018)</i>		

आयकर अपील सं./ ITA Nos. 330 to 332/CHD/2018

निर्धारण वर्ष / Assessment Years : 2010-11 to 2012-13

M/s Altruist Technologies Private Ltd., 4 th Floor, Behind Hotel Firhill, Near Tunnel No.103, Shimla	बनाम	The DCIT, Circle, Parwanoo
स्थायी लेखा सं./PAN NO: AAFCA3725N		
<i>(Appeal against the order of CIT(A), Shimla dated 30.01.2018)</i>		

निर्धारिती की ओर से/Assessee by : Sh. Rohit Goel, CA
राजस्व की ओर से/ Revenue by : Dr Gulshan Raj, CIT DR

सुनवाई की तारीख/Date of Hearing : 08.08.2018
उदघोषणा की तारीख/Date of Pronouncement : 02.11. 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (A), Shimla [hereinafter referred to as ‘CIT(A)’]

2. Since identical issues are involved in all these appeals, hence, these were heard together and are being disposed of by this common order.

3. The appeal in **ITA No. 330/Chd/2018 for assessment year 2010-11** is taken as a lead case, wherein, the grounds raised by the assessee are as under:-

1. *That Ld. CIT(A) has erred in law and facts in confirming the action of the Assessing officer by holding that unit-3 is reconstruction of existing business activity of the company and thereby holding both units as a single unit.*
2. *The Ld. CIT(A) has erred in law and facts in restricting the deduction u/s 80IC in respect of Unit-3 according to the eligibility of percentage deduction u/s 80IC for Unit-2*
3. *The Ld. CIT(A) has erred in law and facts in holding initial assessment year of Unit-3 same as of Unit-2.*

3. Since all the three grounds are interlinked, hence, they are taken together for adjudication. The brief facts relevant to the issue are that the assessee company is engaged in the business of Information and Communication Technology since assessment year 2006-07. The assessee claimed deduction u/s 80IC of the Income-tax Act, 1961 (in short 'the Act') in respect of its two units namely Unit-II and Unit-III. For the Unit-2, the assessee took the initial assessment year as 2006-07 and for Unit-3, the initial assessment year for claiming exemption u/s 80IC of the Act was taken as assessment year 2010-11. The Assessing officer, however, observed that the business operation

of the assessee company at both the business premises (Unit II & Unit III) was identical and further that Unit III was carrying out its operation at the registered office of the Company which was of Unit No. II also, hence, it amounted spitting / reconstruction of an existing business. He, therefore, held that Unit-III was not a new Unit within the meaning of section 80IC of the Act and its initial assessment year would be the same as of the Unit-II. The assessee unsuccessfully contested the appeal before the CIT(A).

4. Before us, the Ld. Counsel for the assessee has submitted that the findings of the lower authorities that both the Units were being run by the assessee from the same premises was wrong. That the Unit-II was being operated from STPI Building, Shimla w.e.f. 30.3.2007. The Ld. Counsel for the assessee in this respect has placed reliance upon the DIC (District Industries Centre), Registration letter dated 30.3.2017, wherein, the address of the assessee Unit-II has been mentioned as 'STPI Building, Black 24, SDA Complex Shimla. It has been claimed that, whereas, Unit-III of the assessee was being run from 4th Floor, Altruist Technologies Private Limited, Behind Hotel Firhill, Near Tunnel No. 103, Shimla. The Ld. Counsel in this respect has relied upon the copy of the letter of the DIC Registration of Unit-III placed at paper Book page No. 42. He has further submitted that with a view to establish a new unit (Unit-III), the assessee company on 21.1.2008 had purchased a building at the aforesaid address of Unit-III. The premises at that time was on rent to some outside parties. Thereafter, the premises was vacated and the

registered office of the assessee company was shifted to said premises in assessment year 2009-10. The necessary registration and approval were obtained and new Unit-III was started at the said premises, the operation of which had commenced in assessment year 2010-11 with new employees and new plant & machinery. The Ld. Counsel for the assessee has demonstrated that Unit-II and Unit-III were being operated from separate buildings with separate employees, separate clientage and separate sale tax registration numbers and separate registration with District Industries Centre, as given in the following charts:-

Particulars	Unit-II	Unit-III
Name and address of the Unit	Altruist Technologies Pvt Ltd, Unit-II, Block 24, SDA Commercial Complex, STPI Building kasumpti, Shimla	Altruist Technologies Pvt Ltd. Unit-III, 4thFloor, Altruist Mount, Behind Firhill, Shimla
Distance between the two units	7 Kms.	
Service Tax Registration No.	AAFCA3725NST001	
Sales Tax Registration No.	9658	14158
Registration with District Industries Centre, Shimla	No. 02/011/21/00038 dated 30.3.2007	No. 02/11/21/00256 effective from 31.12.2009
Date of Commencement of Production	21.09.2005	31.12.2009
Initial A.Y. u/s 80-IC	A.Y. 2006-07	A.Y. 2010-11
Accounts Books	Separately maintained and duly audited	Separately maintained and duly audited
Investment in	45,16,158/-	76,15,962/-

Computers (being primary plant & machinery) in A.Y.2010-11		(100% new purchases with no transfers form Unit-II)
Attributable profits	20,85,23,896/-	1,06,90,722/-
No. of employees as of date of formation of Unit-3.	175 employees	27 employees

Unit-II

Clients	Unit II –invoiced amounts (Rs.)
Bharti Airtel	173825288
Bharti Airtel –Simla	1108148
Bharti Airtel-Mohali	5820103
Bharti Airtel –Kolkata	125176
Bharti Airtel-Delhi	1428765
Idea Cellular Ltd	11223942
MTNL-Delhi	3865460
RCIL-Mumbai	121567046
Tata Teleservices Ltd., Mumbai	25859599
Total	34,38,23,527

Unit-III

Clients	Unit-III invoiced amounts (Rs.)
Aircel Lad	1061050
Hungama Debtor	4002574
MTNL-Mumbai	258361
Shotformats Digital Productions Pvt. Ltd	1469686
AMA India Consultants Income	610786
Federation of All India Aluminum Utensils Manufac	18000
The Tribune Trust	200000
Total	17,169,557

5. It has been further explained that the clientage and project being serviced from Unit-III were fresh, the company earlier was giving services in relation to the one product i.e. Voice Chat to its clients like Airtel, Reliance, Idea and TATA. However, since the business of the company had grown up and need was felt to start a new unit also so as to expand its area of service, hence, a separate unit was started wherefrom the services into other products to other Non-Telco companies / clients in the field of Information Technology and Software services were provided. That the Unit-III of the assessee company has been running in the company owned premises spread over four floors and has tremendous capacity to grow and make big mark in Mobile Value Added Services and information technology industries and that the business of the company has seen a tremendous growth. It has been further explained that though, the building used of Unit -III was earlier registered office of the Company, however, the said building now has been used for the operation of Unit-III, whereas, the Unit-II has been separately running from another building situated at a distance of 7 Kms.

6. We find that the above contentions of the assessee have not been rebutted by the lower authorities. The only objection put by the Assessing officer was that the building / address of Unit-III was earlier the registered office of the company, however, it is not the case of the Assessing officer that Unit-II was also run from this building. In our view, merely because the assessee company had started conducting its operation of Unit-III, from its registered office, that does not mean that the assessee company has been split

out or reconstructed out of Unit-II. There is no allegation that the plant and machinery of Unit-II has been used for Unit-III. Moreover, the assessee company has also not only shown tremendous growth in business but has also demonstrated that it has been dealing with and attracting new clients and servicing in new products. In view of this, we do not find any justification on the part of the lower authorities in denying the claim of the assessee by assuming that Unit-III was not a new unit or that it was started by way of spitting or reconstruction of an existing unit. The orders of the lower authorities are therefore, set aside and the Assessing officer is directed to give relief to the assessee as per the provisions of section 80IC of the Act treating the Unit-III as a separate and distinct unit. The appeal of the assessee is hereby allowed.

7. Since the issue involved in all the appeals filed by the assessee is identical, our finding arrived at in ITA No. 330/Chd/2018 will apply mutatis-mutandis to appeals filed by the assessee for other assessment years i.e. in **assessment year 2011-12 (ITA Nos. 331/Chd/2018) and assessment year 2012-13 (ITA No. 332/Chd/2018).**

Accordingly, these, appeals of the assessee are allowed.

ITA No. 428/Chd/2018 (A.Y.2014-15)

8. In this appeal, besides the identical grounds raised in ITA No. 330/Chd/2018, which we have adjudicated above, the assessee has

taken another ground agitating the action of the CIT(A) in confirmation the disallowance of Rs. 7,02,090/-.

9. No argument have been addressed by the Ld. Counsel for the assessee on this issue, hence, this ground of appeal is dismissed as 'not pressed'. This appeal of the assessee, therefore, stands partly allowed.

In the result, the appeals of the assessee in ITA Nos. 330 to 332/Chd/2018 and 427/Chd/2018 stands allowed whereas ITA No. 428/Chd/2018 stands partly allowed.

Order pronounced in the Open Court on 02.11.2018

Sd/-
(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

दिनांक/Date: 02.11. 2018

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar