आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
' A' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.2438/Chny/2014**
निर्धारण वर्ष /Assessment year : 2010-11

M/s.DXN Herbal Manufacturing India Pvt Ltd., RS No.14/4 & 142/5,Whirlpool Road, Thiruvandar Koil, Pondicherry 605 102.	**Vs.**	The ACIT, Circle-I, Pondicherry.
[PAN AAABCD 4141 M] **(अपीलार्थी/Appellant)**		**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.K.Ravi,Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.AR.V.Sreenivasan,JCIT,D.R
सुनवाई की तारीख/Date of Hearing	:	11-12-2018
घोषणा की तारीख /Date of Pronouncement	:	13-12-2018

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-VI, Chennai in ITA No.671/13-14 dated 30.03.2014 for the assessment year 2010-11.

2. Shri K.Ravi represented on behalf of the Assessee and shri AR.V.Sreevivasan represented on behalf of the Revenue.

3. The appeal filed by the assessee is delayed by 87 days for which the assessee has filed an affidavit for explaining the reasons for the delay. The ld.D.R has not raised serious objections in regard to the delay. Further, the affidavit filed by the assessee has not been found to be false. Consequently the delay in filing the appeal is condoned and the appeal is disposed of on merit.

4. In this appeal, the assessee has raised the following grounds:-

1. The Order of the Learned Commissioner of Income Tax (Appeals) and that of the Assessing Officer is contrary to the law, facts and circumstances of the case and in any case violative of the principles of equity and natural justice.

DEDUCTION u/s 801B

Whether manufacture or not:

2. The Learned Assessing officer has erred in denying benefit u/s 801B for the reason that the appellant herein is not engaged in manufacturing activity.

3. The Learned Assessing officer has relied on the appellants own case in the ITAT the deduction was denied as the appellant was not manufacturing or producing as per the definition of section 801B.

4. The Learned Assessing officer has erred in not considering the fact that the appellant herein is registered with the Central Excise Act, 144 and duly paying the excise duty for the manufacturer of drugs.

Definition of Small scale Industries

The Learned Assessing officer has erred in denying the benefit u/s 801B for the reason that the Ayurvedic medicine manufactured by the appellant is not in the list of items covered by Schedule III specified in the notification S.O 477 (E) dated 25/07/1991 issued by the Government of India under section 11B of the Industries (Development & Regulation) Act, 1951.

5. The Learned Commissioner of Income Tax (Appeals) and the Assessing Officer have failed to consider the fact that when the word "Manufacturer" has not been defined in the Income Tax Act, it has to be given the meaning as understood in the common parlance.

6. The Learned Commissioner of Income Tax (Appeals) and the Assessing officer have failed to see that the operations of your appellant would amount to "production" of capsules, even assuming but not admitting that they are not "manufacture".

7. The Learned Commissioner of Income Tax (Appeals) and the Assessing Officer have erred in not considering the fact that the appellant herein is registered with the Central excise Act, 144 and duly paying the excise duty for the manufacturer of drugs.

8. The Learned Commissioner of Income Tax (Appeals) and the Assessing Officer ought to have appreciated the fact that the drug manufactured by the appellant undergo several process involving filling of capsules, polishing, sorting/inspecting, testing, counting and bottling, labeling, packing process and that a distinct change comes in the finished product which can be commercially marketed for consumption of medicine.

<u>Deduction u/s 43B</u>

6. The Learned Commissioner of Income tax (Appeals) has erred in denying the deduction u/s 4313 for the excise duty paid under protest as the payment has been made de hors liability.

7. The Learned Commissioner of Income tax (Appeals) has erred in denying the benefit of deduction for the reason that the excise duty was not charged in the profit and loss account and was classified under current assets as advances.

8. The Learned Commissioner of Income tax (Appeals) has erred in denying the benefit of deduction for the reason that the excise duty was not included in the sales invoice.

9. The Learned Commissioner of Income tax (Appeals) has erred in denying the benefit of deduction on the ground that the appellant had paid the duty under protest.

5. In regard to Ground Nos.2 to 8, the ld.A.R submitted that the issue was against the action of the Ld.CIT(A) and the ld. Assessing Officer in denying the assessee's claiming of benefit of deduction u/s.80-IB of the Act on the ground that the assessee was not engaged in manufacturing activity. It was submitted by ld.A.R that the assessee company is engaged in the manufacture and production of Ayurvedic products. It was a submission that the issue was now squarely covered by the decision of the Hon'ble Jurisdictional High Court in assessee's own case in T.C.(A) Nos.341 & 342 of 2007 dated 21.06.2018 wherein paras 23-25 at page-19, the Hon'ble Madras High Court has held as follows:-

> *"23. The factual matrix clearly demonstrates that what has been done by the assessee is manufacture. The decision relied on by the Revenue in the case of Sacs Eagles Chicory Vs. Commissioner of Income Tax reported in [(2003) 255 ITR 178 SC] is distinguishable on facts as the activity which was the subject matter of the said case was making powder from chicory roots and the appeal by the assessee was dismissed as the assessee failed to satisfy the test laid down in Aspinwall & Co.*

Ltd., case. The learned counsel for the Revenue relied upon the decision of the Division Bench of this Court in Commissioner of Income-f tax Vs. Madurai Pandian Engg. Corpn. Ltd., reported in [(1999) 239 ITR 375 (Madras]. The question was whether the business of tyre retreading done by the assessec amounts to production of a new article and whether the assessee was entitled to relief under Sections 80J and 8OHH of the Act.

24. This Court held that the common thread which runs in all the decisions is that only when a new distinct commodity commercially accepted as such, comes into existence as a result of processing, that a commodity can be said to have been manufactured and in the said context, retreading of tyres did not result in the production of an articles for the purpose of Section 8OHH of the Act. The said decision is clearly distinguishable on facts. In the assessee's case, the product which emerges after the process of manufacture is commercially a distinct commodity, can be of consumption as such containing a requisite amount of ingredients in the appropriate percentage, preserved in proper form as contained in the licence issued under the authorised enactments as well as the technical logo shared by the foreign company.

25. For the above reasons, the Question No.1 is in favour of the assessee and against the Revenue."

It was submitted by ld.A.R that the issue being squarely covered by the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment years 2003-04 & 2004-05, the ld. Assessing Officer may be directed to grant the assessee the benefit of deduction u/s.80IB of the Act.

6. In reply, the ld.D.R vehemently supported the orders of ld. Assessing Officer and the Ld.CIT(A).

7. We have considered the rival submissions. A perusal of the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment years 2003-04 & 2004-05 shows that the Hon'ble Jurisdictional High Court has answered the question as to whether the assessee was entitled to claim benefit u/s.80IB of the Act in favour of the assessee and has held that the factual matrix clearly demonstrates that what has been done by the assessee is manufacture. This being so, respectfully following the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment years 2003-04 & 2004-05 referred to supra, the ld. Assessing Officer is directed to grant assessee the benefit of deduction u/s.80-IB of the Act as claimed.

8. In respect of Ground Nos.6 to 9, it was submitted by ld.A.R that the issue was against the action of the Ld.CIT(A) and the ld. Assessing Officer in denying the assessee's claiming of benefit of deduction u/s.43B of the Act in respect of excise duty paid by the assessee. It was submitted by ld.A.R that the decision of the Hon'ble Jurisdictional High Court in assessee's own case in T.C.(A) Nos.341 & 342 of 2007 dated 21.06.2018 wherein para-26 the Hon'ble Madras High Court has held as follows:-

"26. Question No.2 is framed by the order dated 20.03.2007, is to the effect that whether ITAT was right in denying the claim under Section 43B, in fact, the question of payment itself was not disputed. The Assessing Officer rejected the claim on the ground that the payment was not made at the time of filing the return, but was made only during the course of assessment and that such step could not have taken unless the revised return had been filed. To that effect, the Assessing Officer, referred to the decision of the Supreme Court in Goetze (India) Ltd., Vs., Commissioner of Income Tax reported in [(2006) 157 Taxman 1 (SC)] and same was the view taken by CIT(A). However, ITAT proceeded on a slightly different angle, not on the ground that the petitioner had not filed the revised return that being entitled to the claim of the benefit under Section 43B, i.e., to say, on the ground that while the assessee is not in a position to spell out the nature of the liability, and it was making only verbal argument without stating the nature of expenditure and that the assessee has not produced any order of the Excise Department, through which the liability stated to have emerged and it also opined that, to avail deduction, the payments are required to be actually paid within the time stipulated to the proviso to Section 43B of the Act. In the previous paragraphs, we have noted the admitted facts recorded by the Assessing Officer, which clearly shows the ssessee has availed the CENVAT credit and paid the excise duty. That apart the assessee won the case for the subsequent year 2009-2010 in T.C.A.No.730 of 2015, which was filed by the Revenue against the assessee. Thus, the substantial question of law No.2 is answered in favour of the assessee arid against the Revenue."

9. In reply, the ld.D.R vehemently supported the orders of ld. Assessing Officer and the Ld.CIT(A).

10. We have considered the rival submissions. As it is noticed that the issue in respect of excise duty has been held by the Hon'ble Jurisdictional High Court in assessee's own case for assessment years 2003-04 & 2004-05 in favour of the assessee, respectfully following the decision of Hon'ble Jurisdictional High Court in assessee's own case for assessment years 2003-04 & 2004-05 referred to supra, the ld. Assessing Officer is directed to grant assessee the benefit of deduction u/s.43B of the Act in respect of Excise Duty paid.

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

Order pronounced on 13th December, 2018, at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A.MOHAN ALANKAMONY)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(**जॉर्ज माथन)**
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai
दिनांक/Dated: 13th December, 2018.
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF