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आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 762/CHD/2009

निर्धारण वर्ष / Assessment Years : 2006-07

The ACIT, Circle 2(1), Chandigarh	बनाम	M/s VTL Investment Ltd., (formerly known as Vardhman Threads Ltd.,) Vardhman Complex, Chandigarh Road
स्थायी लेखा सं./PAN NO: AABCV7449L		
<i>Appeal against the order of CIT(A), Chandigarh dated 01.05.2009</i>		

आयकर अपील सं./ ITA Nos. 550/CHD/2009

निर्धारण वर्ष / Assessment Years : 2006-07

M/s VTL Investment Ltd., (formerly known as Vardhman Threads Ltd.,) Vardhman Complex, Chandigarh Road	बनाम	The ACIT, Range-2, Chandigarh
स्थायी लेखा सं./PAN NO: AABCV7449L		
<i>Appeal against the order of CIT(A), Chandigarh dated 01.05.2009</i>		

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आयकर अपील सं./ ITA Nos. 539/CHD/2011

निर्धारण वर्ष / Assessment Years : 2007-08

M/s VTL Investment Ltd., (formerly known as Vardhman Threads Ltd.,) Vardhman Complex, Chandigarh Road	बनाम	The ACIT, Range-II, Chandigarh
स्थायी लेखा सं./PAN NO: AABCV7449L 3.1.2011		
<i>Appeal against the order of CIT(A), Chandigarh dated 03.01.2011</i>		

अपीलार्थी/Appellant		प्रत्यर्थी/Respondent
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निर्धारिती की ओर से/Assessee by : Sh. Subhash Agrawal, Advocate

राजस्व की ओर से/ Revenue by : Sh.G.S.Phani, CIT DR

सुनवाई की तारीख/Date of Hearing : 11.12.2018
उदघोषणा की तारीख/Date of Pronouncement : 11.12. 2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee and Revenue against the separate orders of the Commissioner of Income Tax (Appeals), Chandigarh [hereinafter referred to as CIT(A)].

2. First, we shall take up assessee's appeal in **ITA No. 550/Chd/2009**, wherein, following grounds of appeal have been taken:

1. *That the Ld. CIT(A) has erred in law and on the facts while upholding the action of the Assessing officer for allocating proportionate Salary, traveling & conveyance, postage & telegram and telephone & telex expenses amounting to Rs. 270645 to exempted dividend income and disallowing the same u/s 14A of Income Tax Act.*
2. *Without Prejudice to Ground No. 1 above, the Ld. CIT(A) has erred in law and on the facts while upholding the action of the assessing officer for calculating the allocable expenses for earning dividend income by apportioning the expenses in the ratio of dividend income to profits of the undertaking instead of dividend income to total receipts of the appellant.*
3. *That the Ld. CIT (A) has erred in law and on the facts while upholding the action of the Assessing officer for excluding following receipts from the eligible profits for deduction u/s 80-IC of Income Tax Act.*

Particulars	Amount (Rs.)
<i>Sale of DEPB</i>	<i>224462</i>
<i>Profits on sale of raw material</i>	<i>4330</i>

4. *That the Ld. CIT (A) has erred in law and on the facts while directing to exclude Interest received, provision no longer required written back, sundry balances written back and Misc. Receipts from the eligible profits for deduction u/s 80-IC of Income Tax Act.*
5. *That the Ld. CIT (A) has erred in law and on the facts while not directing the Assessing officer to observe consistency in approach in Income tax Proceedings against the appellant while allowing deduction u/s 80-IC of the Income Tax Act.*
6. *That the appellant craves leave to add / amend / alter any grounds of appeal on or before the date of hearing.*

It is prayed that appeal may kindly be allowed, necessary reliefs as per aforesaid grounds may kindly be granted and/or other reliefs deemed fit and proper under the circumstances of the case may kindly be granted.

4. **Ground Nos.1 & 2 :** Vide these grounds, the assessee has agitated the disallowance of Rs. 2,70,645/- on account of apportionment and thereby disallowance of expenditure relatable to the earning of tax exempt dividend income under the provisions of section 14A of the Income-tax Act, 1961 (in short 'the Act').

Admittedly, the assessment year involved in this appeal is assessment year 2006-07. The assessee did not offer any disallowance u/s 14A of the Act, whereas, the Assessing officer made the disallowance of Rs. 2,70,645/-, however, the assessee has disputed the computation made by the Assessing officer. It may be observed that in the case of 'Godrej & Boyce Manufacturing Co. Ltd. 234 CTR 1 (Bom.) the Hon'ble Bombay High Court has held that Rule 8D of the I.T. Rules r.w.s. 14A(2) of the I.T. Act is not arbitrary or unreasonable but can be applied only if the

assessee's method is not satisfactory. It has been further held that Rule 8D is not retrospective and applies from A.Y. 2008-09. For the years for which Rule 8D is not applicable and in the event of that the AO is not satisfied with the explanation/working given by the assessee, disallowance under section 14A has to be made on a reasonable basis. Almost similar view has been expressed by Hon'ble Delhi High Court in the case of 'Maxopp Investment Ltd, & Others' vs. CIT (247 ITR 162). In respect of cases prior to assessment year 2008-09, the different co-ordinate Benches of this Tribunal have observed that certain percentage of exempt income can constitute a reasonable estimate for making disallowance for the years earlier to assessment year 2008-09. The Hon'ble Bombay High Court in the case of 'CIT Vs. Godrej Agrovet Ltd.,' (ITA No. 934/2011) decided on 8.1.2013 has upheld the order of the Tribunal directing the Assessing officer to restrict the disallowance to the extent of 2% of the total exempt income earned by the assessee. The Coordinate Mumbai Bench of the Tribunal in the case of 'M/s 'CIBA India Ltd Vs. DCIT' ITA No. 9128/2010 for assessment year 2006-07 vide order dated 20.2.2015 while relying upon the decision of the Hon'ble Bombay High Court in the case of 'CIT Vs. Godrej Agrovet Ltd.,'(supra) taking into account the consideration of facts and circumstances of that case has held that the expenditure equal to 4% of the exempt income earned by the assessee would constitute reasonable disallowance u/s 14A and directed accordingly.

Applying the above proposition and considering the facts and circumstances of the case, in our view the interest of justice will be met if

the disallowance made u/s 14A of the Act is restricted to 5% of the total tax exempt earned income . We order accordingly.

5. **Ground No.3:** This has not been pressed and the same is dismissed as not pressed.

6. **Ground No.4 :** Vide ground No.4, the assessee has agitated the action of the lower authorities in excluding certain income like interest received, provision written back, sundry balances written back and Misc. receipts from the eligible profits for deduction u/s 80IC of the Act. As per the lower authorities, since the aforesaid receipts did not constitute income from the manufacturing process, hence, the same was not allowable to be includible for the purpose for eligible income for deduction u/s 80IC of the Act.

7. So far the issues relating to the non-inclusion of the receipts, on account of interest received from customers on account of delayed payments, the provision of written back and sundry balances written back are concerned, the Ld. counsel has invited our attention to the order of the Tribunal in the own case of the assessee, in the earlier / changed name of the assessee 'Vardhman Yarn & Threads Ltd', in ITA No. 530/Chd/2012 & others vide order dated 13.7.2017 and has submitted that while deciding Revenue's appeal bearing No. 569/Chd/2012, the Tribunal has dealt with the issue taken in ground No.3 of the assessee which has been decided in favour of the assessee . We have also examined the details of claim in respect of Misc. receipts which constitute the insurance claim of Rs. 1,89,394/- on account of damaged stock, which in our view, is a

loss compensated for the damaged stock and thereby it will have effect to reduce the loss / expenditure, hence allowable for deduction u/s 80IC of the Act. So far as the receipts on account of interest from customers, provisions written back and sundry balances written back, these undisputedly relate to the business activity of the assessee and from income from the unit of the assessee. So far as the discount on brokerage of ocean freight is concerned, the Ld. Counsel for the assessee has explained that it is discount received by the assessee on payment of brokerage and it will have resulted in netting of the expenditure incurred on account of brokerage and this will go on to increase the business income of the assessee.

8. In view of this, in the light of the decision of the Tribunal in the own case of the assessee bearing ITA No. 530/Chd/2012 & others order dated 13.7.2017 (supra) and in view of our above discussion, the income for the times as discussed above is eligible to be considered and included in the income of the assessee for the purpose of deduction u/s 80IC of the Act. However, the claim of duty draw back amounting to Rs. 427/- and Misc. receipts of Rs. 1201/- is not found tenable and the said receipts are to be excluded for the purpose of computing deduction u/s 80IC of the Act

9. **Ground No.6** is general in nature and does not require any specific adjudication.

The appeal of the assessee stand partly allowed.

ITA No.762/Chd/2009

10. Now coming to the appeal of the Revenue in **ITA No.762/Chd/2009**. The Revenue has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case, the Learned C.I.T. (Appeal) in Appeal No. 353/P/08-09 dated 01.05.2009 has erred in deleting the addition of Rs. 56,770/- on account of shortage of finished goods..*
 2. *The Learned C.I.T. (Appeal) has erred in deleting the addition of Rs. 1,41,346/- on account of free samples with regard to closing stock details which the assessee could not clarify.*
 3. *The Learned C.I. T. (Appeal) has erred in deleting the addition of Rs. 48,014/- made by the A. O. on account of excess depreciations claimed on printer.*
 4. *The Learned CIT(A) has erred in allowing deduction u/s 80IC of the Income tax Act, to the assessee especially when the process undertaken by the assessee is not manufacturing as it does not entail bringing into existence a new and distinct product and nor was the change irreversible.*
 5. *The Learned CIT(A) has erred in directing to work out profit on sale of raw material for disallowing the same from claim of deduction u/s 80IC when the assessee had itself shown the same as income.*
 6. *The Learned CIT(A) has erred in holding that deduction u/s 80IC was to be allowed on the income from waste and scrap sale when these were not manufacturing activity.*
 7. *The Learned CIT(A) has erred in directing to allow deduction u/s 80IC on processing which is not manufacturing activity.*
 8. *The Learned CIT(A) has erred in deleting the addition made by the A.O. on account of purchase of steam on arm length pricing especially when steam is a fast depleting commodity and can not possibly be sold in the open market.*
11. At the outset, both the Ld. Representatives of the parties have drawn our attention to a chart to demonstrate that most of the issues are covered in favour of the assessee by the earlier orders of the Tribunal.

12. **Ground Nos. 1 & 2:** So far as ground Nos. 1 & 2 which are relating to the addition of Rs. 56,770/- on account of shortage of furnished goods, the same is covered by the decision of the Tribunal in the own case of the assessee for assessment year 2003-04 bearing ITA No. 265/Chd/2007 dated 23.12.2013, wherein, identical issue is decided vide para 11 of the said order for assessment year 2003-04, and the Tribunal after discussing the facts of the case has observed that the shortage in the finished goods being very small and is normally due to wastage etc. and also considering the plea of the assessee that it is customary that some of the samples may be distributed for promotion of the products, had deleted the addition.

13. Considering the above decision of the Tribunal and also considering meager amount as compared to the large stock of the assessee of the finished goods, we do not find any merits in these grounds of the Revenue and the order of the CIT(A) is upheld on these issues,

14. **Ground No.3** is relating to the claim of excess depreciation on printer. As per the assessee, the same being a computer software asset, the assessee was entitled to the depreciation @ 60% which otherwise is upheld by the CIT(A).

15. However, the Ld. DR has submitted that the printer does not constitute software which is depreciable and, hence, the depreciation at the normal rate should have been allowed.

16. We have heard the rival contentions. The assessment year involved is assessment year 2006-07. Even if the depreciation is allowed at a higher or

normal rate of the depreciation rate, the entire of the depreciation will be get absorbed / stands allowed by now i.e. i.e. in the assessment year 2019-2020. We do not see any merit at this stage to interfere as it will not serve any purpose as the same will ultimately have 'nil' tax effect. Hence, without deliberating upon the merits of the issue, we think that at this stage, the findings of the CIT(A) needs not to be disturbed. This ground of the Revenue's appeal is therefore, stands dismissed.

17. **Ground No.4:** Vide ground No.4 the Revenue has agitated the action of the CIT(A) that as to whether the activity carried on by the assessee constitute the 'manufacturing process'. The issue is admittedly covered by the decision of the Tribunal in ITA No. 569/Chd/2012 vide order dated 13.7.2017, wherein, the Tribunal has discussed this issue vide paras 13 to 15 of the said order. Since the issue has already been decided in favour of the assessee in the own case of the assessee in earlier assessment year and no contrary decision has been cited before us, this ground of the Revenue has no merit and the same is accordingly dismissed.

18. **Ground No.5:** Vide ground No.5, the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to work out the profit on the sale of raw material and thereafter disallow the same for the eligible profits u/s 80IC of the Act. The Ld. Counsel for the assessee has submitted that admittedly the sale of raw material cannot be said to be an activity from the manufacturing unit of the assessee. However, what is to be disallowed is the profit on the sale of the raw material. We do not find any infirmity in the order of the CIT(A) on this issue and the same is upheld.

19. **Ground No.6** : The Revenue vide this ground has agitated the action of the CIT(A) in allowing deduction u/s 80IC of the Act on the income from waste and scrap sale. The plea of the assessee is that the waste and scrap is generated out of the manufacturing activity of the assessee. The Ld. CIT(A) considering the facts and circumstances of the case has also held so. In view of this, we do not find any infirmity in the order of the CIT(A) on this issue. This ground of the Revenue is therefore, dismissed.

20. **Ground No.7** : Vide ground No.7, the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to allow deduction u/s 80IC of the Act on the processing charges received by the assessee. The Ld. CIT(A) after considering the submissions of both the parties and also examining the facts of the case held that the same to be an activity carried out by the assessee for third party and has directed the Assessing officer to allow deduction u/s 80IC of the Act on the profits earned from the processing activity of the assessee.

21. After considering the rival submissions, we do not find any infirmity in the order of the CIT(A) on this issue also. This ground, therefore, stands dismissed.

22. **Ground No.8**: Vide ground No.8, the Revenue has agitated the action of the CIT(A) in directing the Assessing officer to delete the addition made by him on account of purchase of steam on arm length pricing from the sister concern. The case of the Assessing officer was that since the aforesaid product was a fast depleting commodity and could not have been possibly sold in the market, the assessee devised the aforesaid

method of sale / purchase from the sister concern, therefore, the said expenditure was not allowable as expenditure. The Ld. CIT(A) after considering the submissions of the assessee and also considering the fact that only a reasonable profit @ 7.37% has been paid to the sister concern, deleted the disallowance of the expenditure.

23. We have considered the rival submissions and also have gone through the order of the CIT(A) and we do not find any infirmity in the same. In view of this, there is no merit in the ground raised by the Revenue and the same is accordingly dismissed.

In the result, the appeal of the Revenue is partly allowed.

ITA No. 539/Chd/2011:

24. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Ld. CIT(A) has erred in law and on facts while passing the impugned appellate order on the following issues.*
2. *That the Ld. CIT(A) erred in law and on facts while upholding the impugned order of the Ld.AO on regarding exclusion of the following receipts from eligible profits for deduction u/s 80IC of The Income Tax Act. 1961:*

<i>Particulars</i>	<i>Amount(Rs.)</i>
<i>Interest from customers</i>	<i>10,72,909</i>
<i>Insurance Claims</i>	<i>5,82,944</i>
<i>Raw material sale</i>	<i>27,84,591</i>
<i>DEPB</i>	<i>14,278</i>
<i>Processing Charges</i>	<i>53,299,902</i>

3. That the appellant craves leave to add/alter/amend any ground of appeal on or before the due date of hearing of appeal.

Hence the appeal may kindly be allowed, necessary reliefs as per aforesaid grounds may kindly be granted and/or other reliefs deemed fit and proper under the circumstances of the case may kindly be granted

25. A perusal of the above grounds of appeal reveals that all the issues taken in this appeal have been discussed in the earlier paras of this order while disposing of the appeal of the assessee for assessment year 2006-07 in ITA No. 550/Chd/2009.

26. In view of our observations made above, the receipts of interest from customers, insurance claims and profits of processing charges as directed above are to be included under the eligible income for the purpose of deduction u/s 80IC of the Act. However, the claim of the assessee regarding DEPB has since not been pressed, is rejected.

So far as the receipts on account of raw material sale is concerned, as observed above, only the profit element in the sale / purchase of raw material is to be excluded for deduction u/s 80IC of the Act as directed above, while deciding ground No.5 of the Revenue's appeal for assessment year 2006-07 as above.

27. There is an additional ground moved by the assessee in this appeal in respect to disallowance u/s 14A read with Rule 8D (2)(iii) of the Act amounting to Rs. 53,43,300/-. However, during the course of hearing the appeal, the Ld. Counsel for the assessee has not pressed this ground, hence; this ground is dismissed as not pressed.

In the result, the appeal of the assessee is treated as partly allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-
(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

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

Dated : 11.12.2018
“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