

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1203/Del/2016
Assessment Year: 2005-06

DCIT, CIRCLE 27(1), ROOM NO. 193, C.R. BUILDING, NEW DELHI	Vs.	WRIGLEY INDIA PVT. LTD. (EARLIER KNOWN AS JOYCO INDIA PVT. LTD.) 206, SECOND FLOOR, OKHLA INDUSTRIAL ESTATE, PHASE- III, NEW DELHI – 20 (PAN: AAACW1789P)
(Appellant)		(Respondent)

Department by	Ms. Rinku Singh, Sr. DR
Assessee by	Sh. Ravi Sharma, Adv. & Ms. Poonam Ahuja, CA

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the Revenue against the Order dated 01.12.2015 passed by the Ld. CIT(A)-22, New Delhi relating to assessment year 2005-06 on the following grounds:-

- i. On the facts and in the circumstances of the cases and in law the order passed by Ld. CIT(A) is erroneous and the Ld. CIT(A) has erred in deleting addition made by the AO on account of disallowance of deduction from Rs.8,96,12,593/- to Rs. 4,97,57,537/- claimed by the assessee u/s. 80IB

of the I.T. Act, 1961 with reference to the specific and detailed findings in the assessment order.

- ii. The appellant craves, leave or reserving the right to amend modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

2. The brief facts of the case are that assessee filed its return of income on 31.10.2015 at an income of Rs. 1,14,21,220/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (In short "Act) on 1.3.2006 at the returned income. The case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Act was issued in this case on 8.9.2006. In response to the notice u/s. 143(2), the AR of the Assessee attended the proceedings from time to time and filed the requisite details as called for. The assessee company is engaged in the business of manufacturing and sale of confectionery products like bubble gum, chewing gum, candies etc. Besides this, the assessee has also carried out certain trading activities. AO noted that no one trade with itself and the assessee has shown artificial profits in gum base unit. Therefore, he held that there cannot be any profit or loss in gumbased unit and allocated its profit to three units to whom the gumbased unit had transferred its products for captive consumption. The AO first worked out allocation of the profits, product wise in the ratio of quantity of that product and the total quantity of all products produced. He then allocated the profit of each product, thus determined to the three units to whom

the product of gumbased unit were transferred in the ratio of quantity of that product transferred to a particular unit and the total quantity of that product. On this basis, the AO reworked the deduction u/s. 80IB. The reduction in claim was mainly due to the fact that the one unit to whom the gumbased unit transferred its product, were eligible for deduction u/s. 80IB at 30%, being the bubble gum unit. The other two units i.e the Trex unit and the Lollipop Unit, though eligible for deduction u/s. 80IB at 100%, had losses. Therefore, the AO held that deduction u/s. 80IB shall be allowed at an amount of Rs. 4,97,57,537/- as against the claim of Rs. 8,96,12,593/- and assessed the income of the assessee at Rs. 3,55,12,610, after taking into effect the disallowance in deduction u/s. 80IB vide his order dated 31.12.2007 passed u/s. 143(3) of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 01.12.2015 has allowed the appeal of the assessee. Aggrieved with the impugned order, Revenue is in appeal before the Tribunal.

3. On the other hand, Ld. DR relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of appeal and stated that AO has rightly allowed the deduction u/s. 80IB of the Act amounting to Rs. 4,97,57,537/-, which does not need any interference.

4. Ld. counsel for the assessee relied upon the order of the Ld. CIT(A). He further stated that assessee's claim of deduction u/s. 80IB in respect of gumbased unit was not allowed in the assessment year 2003-04 and the matter was travelled to the ITAT, who vide its order dated 19.12.2008

has restored the matter to the file of the AO and pursuant to the directions of the Tribunal, the AO passed the order against which the assessee moved before the Ld. CIT(A) in the second round of appeal, who vide his impugned order dated 18.6.2012 has decided the issue in favour of the assessee and against the same, the Revenue filed the appeal before the Tribunal, who dismissed the Revenue's appeal vide its order dated 9.10.2015 for the assessment year 2003-04. Therefore, by respectfully the tribunal's order dated 9.10.2015, the present Ld. CIT(A) vide his order dated 1.12.2015 has held that disallowance made by the AO, cannot be confirmed even on the alternative reasoning which the AO had taken in the AY 2003-04. Therefore, Ld. Counsel for the assessee requested to respectfully follow the Tribunal's order, as aforesaid and dismiss the appeal of the Revenue by upholding the action of the Ld. CIT(A).

5. We have heard both the parties and perused the records especially the impugned order. We note that assessee's claim of deduction u/s. 80IB in respect of gumbased unit was not allowed in the assessment year 2003-04 by the lower authorities and the matter was travelled to the ITAT and the Tribunal vide its order dated 19.12.2008 passed in ITA No. 1562/D/2007 has restored the matter to the file of the AO and pursuant to the directions of the Tribunal, the AO passed the order against the assessee, against which the assessee filed the appeal before the Ld. CIT(A) in the second round of appeal, who vide his impugned order dated 18.6.2012 has decided the issue in favour of the assessee and against

which the Revenue filed its appeal before the Tribunal which was dismissed by the Tribunal vide order dated 9.10.2015 in ITA No. 4794/Del/2012 for the assessment year 2003-04 by holding that the transfer price adopted by the assessee, is the fair market value of the goods transferred and, therefore, Ld. CIT(A) correctly allowed the claim of the assessee. In view of above, in our considered opinion, the issue in dispute is squarely covered in favour of the assessee by the aforesaid order of the Tribunal dated 09.10.2015. In the assessment order under appeal, the AO did not make any analysis of the transfer price and has simply held that artificial profits in the case of Buddi Unit, have been created. Since it is a settled issue that the deduction 80IB is to be allowed, even if the goods produced by any eligible unit are capitively consumed, the AO' observation that Buddi Unit is not eligible for deduction u/s. 80IB was not upheld by the Ld. CIT(A). As regards, section 80IA(8) and the transfer price of the goods, the facts in the year, under appeal, are same as in AY 2003-04. Therefore, the Ld. CIT(A) has by following the order of the Tribunal as well as the earlier order of the Ld. CIT(A) in respect of assessment year 2003-04, as aforesaid has rightly held that disallowance made by the AO was not confirmed even on the alternative reasoning which the AO had taken in AY 2003-04 and allowed the appeal of the assessee, which does not need any interference. In view of above, we are of the considered view that there is no illegality or infirmity in the finding of the Ld. CIT(A) on the issues in dispute, hence,

we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6. In the result, the Appeal of the Revenue is dismissed.

Order pronounced on 14-02-2019.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:14/02/2019

SRBhatnagar

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches