

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

आयकर अपील सं. / ITA Nos.808 & 809/PUN/2013  
निर्धारण वर्ष / Assessment Years : 1997-98 & 2000-01

M/s. Eagle Flask Industries Ltd.,  
C/o Eagle Home Appliance Ltd.,  
4<sup>th</sup> Floor, Parmar Gallery,  
Sr. No.77, Wanawadi,  
Shivarkar Road,  
Pune - 411040

.... अपीलार्थी/Appellant

PAN: AAACE4197M

Vs.

The Asst. Commissioner of Income Tax,  
Circle – 8, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni  
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 17.07.2019	घोषणा की तारीख / Date of Pronouncement: 11.09.2019
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

Both the appeals filed by assessee are against separate orders of CIT(A)-V, Pune, both dated 28.02.2013 relating to assessment years 1997-98 and 2000-01 against respective orders passed under section 143(3) r.w.s. 254 / 144 r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals of assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First, we take up the appeal in ITA No.808/PUN/2013, relating to assessment year 1997-98, wherein, the following grounds of appeal have been raised:-

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in upholding the additions made by the A.O. on account of prior period expenses of Rs.40,83,666/- without appreciating the fact that the entire liabilities were crystallized during this assessment year under appeal and therefore, though called prior period expenses were allowable in the year under appeal.*
- 2) *On the facts and circumstances of the case and in law the Ld. CIT(A) also failed to appreciate that there was no loss to the Revenue whether when legitimate business expenses were allowed in one year or other as tax was leviable to the company in the same tax bracket.*
- 3) *On the facts and circumstances of the case and in law the facts do not show that the claim of expenses was shifted to this year intentionally to avoid or evade any taxes. The claim be allowed accordingly.*
- 4) *On the facts and circumstances of the case and in law and if Hon'ble Tribunal's directions would have been carried out properly and further considering that there was no loss of revenue if expenses were allowed in this year therefore such expenses were properly allowable in this year only. It held accordingly.*

4. Though the assessee has raised several grounds of appeal, but all relate to one issue of disallowance of prior period expenses of ₹ 40,83,666/-.

5. Briefly, in the facts of the case, the Tribunal had set aside the issue of prior period expenses back to the file of Assessing Officer to decide the same whether expenses were incurred for the purpose of business or otherwise admissible as deduction and also to decide whether the relevant liability crystallized in the previous year in which it was claimed as deduction and whether the assessee had legitimate reasons for not claiming the deduction in respect of earlier year. Also, the Assessing Officer was directed to find out whether the assessee had claimed or not claimed as deduction the said expenses in the year in which they were incurred. The assessee furnished the

requisite details before the Assessing Officer. The plea of assessee was that there was no loss of revenue as the claim was revenue neutral whether allowed in the current year or in earlier years. However, the Assessing Officer did not allow the plea of assessee and disallowed sum of ₹ 46,06,124/-.

6. The CIT(A) directed the Assessing Officer to delete the addition in respect of certain expenses totaling ₹ 5,22,458/- and the balance of ₹ 40,83,666/- was confirmed in the hands of assessee, against which the assessee is in appeal before us.

7. During the course of hearing, the learned Authorized Representative for the assessee stressed that it had furnished the bills of expenses, liabilities of which were discharged in the year under appeal but the same were disallowed as prior period expenses. He also referred to written submissions filed before the CIT(A) and stressed that though the bills / vouchers related to the assessment years 1996-97, 1995-96 and 1994-95 but the liabilities were crystallized during the assessment year 1997-98 and hence the said liabilities were allowable in the hands of assessee. It was also pointed out that the status of assessee being company, it was being assessed in the same bracket of taxation and there was no loss to the Government. The learned Authorized Representative for the assessee was again asked to file the details before us and he furnished evidences in tabulated form.

8. We proceed to decide the present appeal after referring to the said tabulated details and explanation which is incorporated in the appellate order.

9. The first expense of legal & professional of ₹ 7,000/- which relates to assessment year 1991-92, the assessee claims the said expenditure on payment basis in the year under appeal and has also enclosed the receipt of payment. We find merit in the plea of assessee in this regard, hence the expense of ₹ 7,000/- is allowed in the hands of assessee.

10. Similar is the case in respect of payment of ₹ 10,000/- to G.K. Patankar and Advocate M.R. Deshpande of ₹ 7,500/-. Thus, these are allowed in the hands of assessee.

11. The next item is repairs to Furnace of ₹ 38,627/-. The said expense related to last year i.e. assessment year 1996-97 but the payment was effected during the year. The assessee claims the expense in the year under consideration and the same is allowed as prior period expenses.

12. Coming to the next set of expenses i.e. Rent, salaries, travelling expenses, telephone expenses of USA office, which totals to ₹ 19,72,735/-. The learned Authorized Representative for the assessee pointed out that the expenditure pertained to assessment year 1995-96. The assessee was asked to furnish the details and opportunity was also given to the assessee as to the nature of expenses which were being paid in the current year but related to assessment year 1995-96. Despite several opportunities, the assessee failed to furnish any details in this regard and claims that no account was received but the claim was made and hence, the amount was paid to USA office. The explanation of assessee is incorporated at page 8 of CIT(A)'s order, which we are not reproducing for the sake of brevity. In the absence of assessee having

failed to even file the basic details, we find no merit in the claim of assessee and the said disallowance made in the hands of assessee is confirmed.

13. Now, coming to the next expenses i.e. interest on purchases of ₹ 2,70,913/-. The CIT(A) vide his observations at page 9 has deleted this addition as the assessee himself had disallowed the amount in the computation of income. Hence, there is no merit in any plea raised by assessee in this regard.

14. Coming to the last item of disallowance i.e. amounts of ₹ 2,55,342/- and ₹ 7,87,313/-, the assessee did not file any explanation or details before the authorities below or even before us. Hence, the said amounts merit to be disallowed in the hands of assessee. Accordingly, the claim of assessee is partly allowed.

#### **ITA No.808/PUN/2013, relating to assessment year 2000-01**

15. The issue which arises in the present appeal on merits is the deduction under section 80HHC of the Act. The assessee has raised several grounds of appeal on the jurisdictional issue also. The assessee points out that the Tribunal had set aside the issue back to the file of Assessing Officer, who does not pass order under section 254 of the Act, but takes action under section 148 of the Act and concludes by holding that since the business income was loss in the hands of assessee, so no deduction to be allowed under section 80HHC of the Act.

16. The learned Authorized Representative for the assessee took us through the orders of Assessing Officer and also CIT(A), wherein the CIT(A) first decides the issue of reopening of assessment under section 147 of the Act though the assessment order was set aside by the Tribunal to the Assessing Officer. The CIT(A) observed that after going through the order of Tribunal, it transpires that the issues in both the matters were different even though same pertains to claim of deduction under section 80HHC of the Act. He holds that the Assessing Officer was justified in reopening the assessment under section 147 of the Act on the ground that there were negative business profits, hence deduction under section 80HHC of the Act could not be allowed. The CIT(A) also rejects the plea of assessee that it had disclosed all the material facts truly and fully and no action could be taken under section 147 / 148 of the Act. The CIT(A) reiterated that reopening was done on the ground that after excluding 90% of DEPB, business profit was negative and therefore, deduction under section 80HHC of the Act was not admissible to the assessee and hence, upheld the reopening. The plea of assessee on the other hand, was that there were no negative profits to disallow the deduction under section 80HHC of the Act, the computation is available at pages 9 and 10 of the appellate order. However, the CIT(A) has observed that there was flaw in the calculation of profits of business and observed that there was loss in the hands of assessee and hence, no merit in the claim of assessee. The learned Authorized Representative for the assessee before us has furnished written submissions and also furnished the computation of business profits in the hands of assessee and the deduction which is allowable under section 80HHC of the Act.

17. The learned Departmental Representative for the Revenue on the other hand, relied on the orders of authorities below.

18. We have heard the rival contentions and perused the record. The perusal of order of Tribunal in ITA No.1307/PN/2003, dated 29.09.2006 vide para 14 reveals that the matter was set aside to the file of Assessing Officer for fresh decision and framing the fresh assessment order. The Assessing Officer in line with the directions of Tribunal should have passed fresh assessment order. However, the Assessing Officer fails to pass such an order but goes on to pass order under section 144 r.w.s. 147 of the Act on the ground that there were losses in the hands of assessee and hence, the assessee was not eligible to claim any deduction under section 80HHC of the Act. This amounts to defiance of the directions of Tribunal and is not appreciable. The Assessing Officer first must give effect to the directions of Tribunal as he himself had determined the business profits in the hands of assessee vide his original order passed dated 31.03.2003, against which the assessee filed an appeal before the CIT(A) and order giving effect to the order of CIT(A) was passed on 13.11.2003 by the Assessing Officer. The assessee came in appeal against the order of CIT(A) and the Tribunal passed its order setting aside the issue to the file of Assessing Officer for re-determination. The Assessing Officer should have first passed an order giving effect to the order of Tribunal, which he has failed to do and has gone on another venture of reopening of assessment under section 147/148 of the Act. May be, there is such an assessment order passed by Assessing Officer, but defiance to the directions of Tribunal cannot be upheld. The CIT(A) has also decided the issue and dismissed the appeal of assessee vide his order dated 28.02.2013, against which the assessee filed present appeal before us. We find no merit in the order of CIT(A) in this regard and we reverse the same.

19. Now, coming to the claim of deduction under section 80HHC of the Act. The authorities below have failed to properly compute the business profits in the hands of assessee. There is no merit in the plea of authorities below that the business profits are negative. The assessee before us has filed the working which reads as under:-

Deduction u/s 80HHC

1)	<b>Adjusted total turnover</b>				
	As shown by the assessee				781,867,566.00
	Add: Excise Duty		1,874,666.00		
	Sales Tax		1,731,573.00		
					<u>3,606,239.00</u>
					785,473,805.00
2)	<b>Adjusted Export Turnover</b>				
	Total export turnover (FOB value)				327,169,481.00
3)	<b>Adjusted Business profit</b>				
	Business profit as assessed			22,794,603.00	
	<b>Less: 90% items</b>				
	Interest Income		1,773,000.00		
	Rent Received		24,000.00		
	Miscellaneous Income		<u>501,000.00</u>		
		90%	2,298,000.00		
				2,068,200.00	
	<b>Net Business Profit</b>				20,726,403.00
	<u>Export turnover x Business profit</u> Total				
	<u>327169481 x 20726403</u> 785473805	=	8,633,065.12		

20. The Assessing Officer is directed to compute the deduction under section 80HHC of the Act as the issue now stands covered by the decision of Hon'ble Apex Court in Topman Exports Vs. CIT (2012) 342 ITR 49 (SC). Accordingly, we decide the issue in favour of assessee and the Assessing Officer is directed to verify the computation of business profits in the hands of assessee and also the deduction claimed under section 80HHC of the Act and

allow the same in the hands of assessee. The grounds of appeal raised by assessee are thus, allowed.

21. In the result, appeal of assessee for assessment year 1997-98 is partly allowed and appeal of assessee for assessment year 2000-01 is allowed.

Order pronounced on this 11<sup>th</sup> day of September, 2019.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 11<sup>th</sup> September, 2019.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-V, Pune;
4. The CIT-V, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune