



ITA No.1050-51/Mum/2016  
M/s. Anchor Health & Beauty Care Pvt. Ltd.  
Assessment Years-2009-10 and 2010-11

**आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1050/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2009-10)  
&  
आयकर अपील सं./ I.T.A. No.1051/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2010-11)

<b>DCIT-CC-7(2)</b> Room No.655 Aaykar Bhavan, M.K. Road Mumbai-400 020	<b>बनाम/</b> Vs.	<b>M/s. Anchor Health &amp; Beauty Care Pvt. Ltd.</b> 201, Innova “C” Wing, Marathon Nextzone Off G.K. Marg, Lower Parel (W) Mumbai-400 013.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAACA-4990-N</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Shri Satish Chandra Rajore-Ld. DR
<b>Assessee by</b>	:	Shri M. Subramanian-Ld.AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	04/09/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16/09/2019

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member): -**

1. Aforesaid appeals by revenue for Assessment Years [AY] 2009-10 & 2010-11 contest separate orders of first appellate authority. Since common



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issues are involved, we dispose-off the appeals by way of this common order for the sake of convenience and brevity. First, we take up appeal for AY 2009-10. The grounds raised by revenue read as under: -

1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing that all the expenses have to be apportioned between the sale of manufactured products and sale of trading goods on the basis of the sales turnover for the purpose of working out deduction u/s 80IC without appreciating the fact that depreciation mainly pertains to the manufacturing unit and has to be adjusted against the profit on sale of manufactured goods.
2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing that depreciation has to be apportioned on the basis of sales turnover for the purpose of working our deduction u/s 80 IC without appreciating the fact that depreciation mainly pertains to the plant and machinery of manufacturing unit and apportioning the same on the basis of the sales turnover will present an unrealistic picture as the sales of the manufactured goods amounts to Rs.70.73 Cr. Whereas the sales of trading goods amount to Rs.212.70 Cr.

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2.1 Facts in brief are that assessee being resident corporate assessee stated to be engaged in manufacturing & trading of FMCG products was assessed for year under consideration u/s. 143(3) of the Act on 28/12/2011 at Rs.13.98 Crores after certain additions / adjustments as against returned income of Rs.10.51 Crores filed by the assessee on 24/09/2009.

2.2 During assessment proceedings, it transpired that the assessee had a manufacturing unit at Haridwar which was eligible for 100% profit deduction u/s 80-IC. The total turnover of the assessee was stated to be Rs.283 Crores including turnover at Haridwar Plant for Rs.62.34 Crores. The direct sales at Haridwar Plant was stated to be Rs.7.88 Crores whereas sales through branch transfer stood at Rs.54.41 Crores. The assessee furnished separate Profit & Loss Account of the manufacturing unit and the branches,



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upon perusal of which it was observed that most of the selling expenses and other indirect expenses were not claimed in the Profit & Loss Account of the Haridwar Unit. It was also noted that all indirect expenses relating to sales were debited to Profit & Loss Account of the branches and no such expenses were debited to Haridwar Unit. In defense, the assessee submitted that the profits of Haridwar Unit were arrived at by dividing of business profit of Rs.12.98 Crores (as per income tax computations) in the ratio of sales of manufacturing items (i.e. Haridwar Unit) amounting to Rs.70.78 Crores and sales of trading items for Rs.212.73 Crores and accordingly, deduction u/s 80-IC for Rs.3.24 Crores was claimed on the resultant profits of Haridwar Unit. The attention was drawn to the fact the similar working was accepted in AY 2008-09 also and this was the 3<sup>rd</sup> year of claiming deduction u/s 80-IC.

2.3 However, noticing that purchases made by the branches stood at Rs.187.07 Crores which were shown to be made only from one party and no purchases were shown to be made from Haridwar Unit, it was concluded that the assessee had not accounted-for items received from Haridwar Unit as purchases. It was also observed that the value of the sales made by the branches were accounted in the Profit & Loss Account of Haridwar Unit. Therefore, in the final analysis, reapportioning the indirect expenses, the profits of Haridwar Unit were worked out at loss of Rs.15.45 Lacs and a conclusion was drawn that the assessee was not eligible to claim any deduction u/s 80-IC.



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3.1 Aggrieved, the assessee assailed the working made by learned AO before first appellate authority with success vide impugned order dated 01/12/2015 wherein the assessee, explaining the nature of its business, submitted that the expenses incurred at branches as well as at Head Office would pertain to both manufacturing items as well as trading items. Therefore, in view of exceptional difficulty in allocating the expenses over manufacturing and trading items and to simplify, the assessee has calculated profit of manufacturing unit on proportionate basis adopting sales turnover as the basis, as done in AY 2008-09 which was accepted by the revenue in an assessment framed u/s 143(3) r.w.s. 147 of the Act. The assessee also furnished supporting data to submit that the sale of manufactured items & trading goods stood at Rs.70.78 Crores & Rs.212.73 Crores respectively as against Rs.62.34 Crores & Rs.221.24 Crores taken by learned AO.

3.2 The assessee's submissions were subjected to remand proceedings. In the remand report, learned AO acquiesced with assessee's submissions and worked out proportionate profit of Haridwar unit to be Rs.3.24 Crores. Accepting the findings given in remand report, learned first appellate authority directed Ld. AO to grant deduction u/s 80-IC for Rs.3.24 Crores. Aggrieved, the revenue is in further appeal before us.

4. The Ld. Departmental Representative advanced arguments in support of the ground of appeal and submitted that depreciation on fixed asset mainly pertained to manufacturing unit and the allocation of the same in the ratio of sales was not justified. On the other hand, Ld. AR submitted that



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similar working was accepted by the revenue in AY 2008-09 and secondly, Ld. CIT(A) accepted the findings of Ld.AO as given in the remand report and therefore, there could no occasion for the revenue to be aggrieved.

5.1 We have carefully heard the rival submissions and perused relevant material on record. The undisputed position that emerges is the fact that learned AO, rejecting the sales figures of Haridwar Unit and Branches, as submitted by the assessee, reallocated the expenditure by revising the sales figures. The assessee's submissions before first appellate authority were subject matter of remand proceedings before learned AO. In the remand proceedings, the workings furnished by the assessee were found to be acceptable and learned AO recomputed the proportionate profits of the Haridwar unit. The Ld. CIT(A), considering the findings given in the remand report, directed Ld. AO to grant the deduction u/s 80-IC. This being the case, there could be no occasion for the revenue to be aggrieved by the directions of first appellate authority since the adjudication has been done only in accordance with findings given by learner AO in the remand report. For the said conclusion, we draw strength from the decision of Hon'ble Bombay High Court rendered in **Jivatlal Purtapshi V/s CIT [65 ITR 261 15/02/1967]** wherein it has been held that what is voluntarily accepted cannot give rise to a grievance which could be taken further in appeal.

5.2 In the grounds of appeal, the revenue has contended that the depreciation mainly pertained to manufacturing unit and allocating the same



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on the basis of ratio of sales would not be a correct approach. However, upon perusal of quantum order as well as appellate order, it is quite evident that this factual aspect was never the subject matter of examination / verification by learned AO. In the original assessment order, Ld. AO, himself, has allocated the indirect expenditure in the ratio of sales. Therefore, this being an altogether different aspect, could not be taken up at this stage. This is further fortified by the fact that similar working made by assessee for AY 2008-09 has been accepted by the revenue in an assessment framed u/s 143(3) r.w.s 147. Therefore, from the point of view of rule of consistency also, this plea has to be rejected. The said conclusion is duly supported by the decision of Hon'ble Bombay High Court rendered in **CIT V/s Western Outdoor Interactive P. Ltd. [349 ITR 309]** which follows the earlier decision of **CIT V/s Paul Brothers [216 ITR 548]**.

5.3 Keeping in view the aforesaid facts and circumstances, no fault could be found in the impugned order. Resultantly, the appeal stands dismissed.

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6. Facts as well as grounds of appeal are *pari-materia* the same in this AY. The learned first appellate authority, has granted relief to the assessee by following the decision of 2009-10 in accordance with the findings given in the remand report which is evident from paras 8.3 to 8.5 of the impugned order. This being the case, our observation, adjudication as well as



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conclusion as for AY 2009-10, shall *mutatis mutandis* apply to this year also. In result, the appeal stands dismissed.

### **Conclusion**

7. Both the Appeals stand dismissed.

*Order pronounced in the open court on 16th September, 2019.*

**Sd/-**  
**(Saktijit Dey)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/09/2019  
Sr.PS:-Jaisy Varghese

### **आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai.**