

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos.6068 to 6070/Del/2017
निर्धारणवर्ष/Assessment Years:2012-13 to 2014-15

DCIT Circle 28, New Delhi.	<u>बनाम</u> Vs.	M/s Alchem International P. Ltd. (formerly known as Alchem International Ltd.) 301, Avion Apartment, Mehrauli, Gurgaon Road, Manglapuri, New Delhi. PAN No. AAACA2251L
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Vivek Sharma, CIT DR
Assessee by	Shri P.K. Gupta, CA

सुनवाईकीतारीख/ Date of hearing:	06.09.2022
उद्घोषणाकीतारीख/Pronouncement on	18.10.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These three appeals are filed by the Revenue against different orders of the Ld. Commissioner of Income Tax (Appeals)-29, New Delhi for the assessment years 2012-13, 2013-14 and 2014-15. In all these appeals the assessee raised the following common grounds of appeal except for the figures: -

1. *“Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is right in deleting the addition of Rs.24,94,89,659/- made by the AO on the ground that M/s Alchem International (HK) Ltd. which is a 100% subsidiary of the assessee company without appreciating the fact that a legal façade was created by the assessee by forming the above company at Hongkong which is a tax heaven with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.*

2. *Whether on the facts and in the circumstances of the case the Ld.CIT(A) is right in deleting the addition of Rs.24,94,89,659/- without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd. which is a 100% subsidiary of the assessee company was in India.*

3. *The Ld.CIT(A) has erred in law by not appreciating the fact that from the perusal of financial statements of the subsidiary company at Hongkong shows the following:*
 - *No staff salary is debited in the P&L a/c except in the year 2004.*
 - *No rent or electricity expenses are debited in P&L a/c.*
 - *No marketing expenses were debited in P&L a/c.*
 - *It is found that all the profits made by the subsidiary at Hongkong are received back by the assessee company as advance.*

4. *That the order of the CIT(A) is erroneous and is not tenable on facts and in law.*

5. *That the grounds of appeal are without prejudice to each other.”*

2. The Ld. Counsel for the assessee, at the outset, submits that the issue has been decided in favour of the assessee by the Tribunal in assessee's own case for the assessment years 2006-07 to 2011-12 by various orders in ITA No. 2825/Del/2016 & CO No. 225/Del/2016 dated 16.09.2021 (AY 2006-07), ITA Nos. 2826, 2827 & 2828/Del/2016 & CO Nos. 226 to 228/Del/2016 dated 16.09.2021 (AYs 2007-08 to 2009-10) & ITA No. 3986/Del/2017 dated 17.05.2022 for the AY 2011-12.

3. On the other hand, Ld. DR supported the orders of the Assessing Officer.

4. Heard rival submissions, perused the orders of the authorities below. On perusal of the order of the Tribunal in ITA No. 3986/Del/2017 dated 17.05.2022 identical issue has been decided in favour of the assessee by dismissing the appeal of the Revenue observing as under:

“This is an appeal filed by the Revenue against the order of the Ld.CIT(A)-29, New Delhi dated 16.03.2017 for AY 2011-12.

2. *The Revenue has raised the following grounds of appeal:*

“1. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) is right in deleting the addition of Rs.22,47,16,299/- made by the AO on the ground that M/s Alchem International (HK) Ltd. which is a 100% subsidiary of the assessee company, without appreciating the fact that a legal façade was created by the assessee by forming the above company at Hongkong, which is a tax heaven, with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.

2. Whether on the fact and in the circumstances of the case, the Ld.CIT(A) is right in deleting the additional of Rs.22,47,16,029/- without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd. which is a 100% subsidiary of the assessee company, was in India.”

3. The issue involved in the departmental appeal for AY 2011-12 relates to addition of Rs.22,47,16,299/- which was made by the Assessing Officer. The addition made was on account of the profit earned by Hongkong subsidiary of the assessee based on the presumption of the Assessing Officer that this legal façade was created by the assessee and effective management and control of the subsidiary company was in India.

4. Relevant extract of the order of CIT(A) as per Para 8.4 on page no. 23 of order of CIT(A) vide Appeal No. 158/15-

16/CIT(A)-29 AY 2011-12 is reproduced hereunder for ready reference:

“8.4 Accordingly, based on the same reasoning as mentioned in the appellate orders for earlier assessment years and looking to the facts and circumstances of this case and in law, the addition made under section 6(3)(ii) of the Act with respect to clubbing of income of the appellant from its subsidiary at Hongkong i.e. AIHK is held to be not called for and accordingly the addition made amounting to Rs.22,47,16,299/- is directed to be deleted. These grounds of appeal (5 and 6) are allowed.”

5. *At the outset, we find that the identical issue has been decided by this Tribunal in assessee’s own case for AYs 2006-07 to 2009-10 in CO NO. 225/Del/2016 in ITA No. 2825/Del/2016 dated 07.12.2021. Relevant extract of the order for AY 2006-07 is reproduced below:*

“5. It is evident that Hongkong entity was a separate legal entity and was registered in Hongkong. There are enough evidences which show that the Hongkong entity was doing the business and was subject to Hongkong laws. Transfer Pricing Officer has found the transactions between the assessee company and Hongkong entity at arms length which also establish that the transactions between the assessee company and Hongkong entity were genuine business transactions. There is no evidence brought on record to prove that the control

and management of Hongkong entity was being done wholly from India. In any case, even if control and management of Hongkong entity had been found situated wholly in India, though this is not the proved case of Revenue, yet the profit of Hongkong entity could not be clubbed with the profits of the assessee company. There is no evidence brought on record by the Revenue to prove that the transactions undertaken by Hongkong entity were sham transactions and were transactions of the assessee company. Hongkong entity was registered in Hongkong on 20.09.2022 and was working since then, independently. Revenue itself has accepted that the assessee company has made exports to Hongkong entity. Transactions between the assessee company and its Hongkong subsidiary have taken place at arm's length as found out by TPO also. Payments have been made and received by the assessee and Hongkong entity through banking channels only. All the factual matrix of the case have been captured and finding have been recorded by the first appellate authority. Merely because Hongkong may be a tax free or low tax jurisdiction, that alone does not prove that the Hongkong entity was legal façade of the assessee company. CIT(A) has exhaustively discussed the issue at hand and has recorded his findings which are based on the material. It is the Assessing Officer who himself has accepted in para 4 of the assessment order that exports were made by the assessee company to Hongkong entity. Reading of the assessment order para 9.1 suggests that it was

the finding of DDI that Hongkong entity was not doing any actual activity which unfortunately has been followed by the Assessing Officer without adverting to the facts available on record which prove that exports were made by the assessee company to Hongkong entity. Even the finding of Transfer Pricing Officer in AY 2010-11 cannot be ignored when he records that exports executed by the assessee company to its associated enterprise was short of arms length price by Rs.3,64,43,842/-. Had there been no activity done by Hongkong entity, how could such finding be arrived at by TPO in the first place? Exports were made under the government policies and as per Import Export regulations and this cannot be ignored. There is nothing on record to suggest that the statement of Ms. Chanchal Bhutani was given to the assessee even. Thus, there is nothing before us to take a view different from the view taken by Commissioner of Income Tax (Appeal) and thus, we dismiss all these grounds raised by the Revenue in this regard.”

6. *Further, the matter was also decided in favour of assessee in the similar matter in assessee’s own case for the AYs 2007-08, 2008-09 and 2009-10 vide CO Nos. 226, 227 and 228/Del/2016 in ITA Nos. 2826, 2827 and 2828/Del/2016 dated 7.12.2021.*

7. *Since, the issue stands covered in favour of the assessee by a number of orders for four various assessment years, in the absence of any material change in the factual*

matrix and the legal proposition, we hereby hold that the appeal of the Revenue is liable to be dismissed.”

5. Facts being identical and also since no distinguishing features have been brought on record following the orders of this Tribunal for various assessment years, we sustain the order of the Ld. CIT(Appeals) and reject the grounds raised by the Revenue.

6. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open court on 18.10.2022

**Sd/-
(BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER**

Dated: 18.10.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi