

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.7474/Del/2018  
Assessment Year: 2010-11

<b>DCIT Central Circle – 4 New Delhi</b>	<b>Vs</b>	<b>Hyderabad Distilleries &amp; Wineries Pvt. Ltd. A-4, Industrial Area, Uppal, Hyderabad Telangana 500039 PAN No.AAACH2679B</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	Sh. M. K Madan, CA
<b>Respondent</b>	Sh. Abhishek Kumar, SR. DR

Date of hearing:	23/11/2022
Date of Pronouncement:	23/11/2022

**ORDER**

**PER N.K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-22, New Delhi dated 30.08.2018 pertaining to A.Y.2010-11.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.25248062/- made by the AO on account of proportionate disallowance of expenditure.

3. At the very outset the Counsel for the assessee stated that the impugned issue was considered by this Tribunal in earlier assessment year A.Y. 2008-09 and has decided the issue in favour of the assessee in ITA No. 740/Del/2012 wherein a similar issue was considered vide ground No.6 of that appeal.

4. The DR fairly concede to this.

5. We have carefully considered the underlying facts in the issue. We find force in the contention of the Counsel. A similar issue was considered by this Tribunal in ITA No.740/Del/2012 vide order dated 12.07.2018 at ground No.6 of that appeal. The relevant findings read as under :-

*“22. We have heard both the parties and perused all the relevant material available on record at the time of hearing. As relates to Ground Nol and 1.1, as per the submissions of the Ld. AR and from the record, the fact which emerges that the assessee was always engaged in the business of manufacturing of Indian made foreign liquor for which the assessee holds valid license for manufacturing which is renewed on early basis by the Excise Department of Government of State of Andhra Pradesh. Under the terms of the prevalent Excise Policy, the license holder alone can sale Indian made foreign liquor products to Andhra Pradesh Beverages Corporation Ltd.. Though the assessee had both license capacity and manufacturing facility for Indian made foreign liquor, the assessee did not own any popular brand for Indian made foreign liquor. Therefore, the assessee entered*

into royalty based on profit sharing agreement with M/s Jagatjit Industries Ltd. for carrying on its business activities since 1977. At the initial years, the terms of these agreements was that the assessee will manufacture Indian made foreign liquor using the brands owned by M/s Jagatjit Industries Ltd. The assessee paid royalty to M/s Jagatjit Industries Ltd. Thus, the assessee was supplying Indian made foreign liquor products directly to the Andhra Pradesh Beverages Corporation Ltd in the brand name M/s Jagatjit Industries Ltd. This arrangement continued till 30<sup>th</sup> September 2006 and sales considerations received by the assessee was remitted to M/s Jagatjit Industries Ltd. after deducting fixed bottling charges and expenses incurred by the assessee. From the records it can be seen that the Department of Excise, Government of Andhra Pradesh vide government order dated 23/11/2005 allowed sub leasing of capacity and Indian made foreign liquor manufacturing plants. In view of this new excise policy, M/s Jagatjit Industries Ltd. was keen to supply Indian made foreign liquor products directly to Andhra Pradesh Beverages Corporation Ltd. in state of Andhra Pradesh. In view of this new policy M/s Jagatjit Industries Ltd. was not allowing to use its brand name by the assessee and in the absence of own saleable brands or any other substitute, the assessee agreed for sub licensee for part of its license capacity to M/s Jagatjit Industries Ltd. Accordingly, Lee assessee entered into a sub licensee agreement dated 5/3/2007 with M/s Jagatjit Industries Ltd. whereby the assessee sub license its capacity of manufacturing to the extent of 68.5 lacs proof liters to produce Indian made foreign liquor to M/s Jagatjit Industries Ltd. Vide said agreement, the assessee also sub lease part of its Indian made foreign liquor manufacturing facilities including building, plant and machinery and other equipments to M/s Jagatjit Industries Ltd. Since the first sub license was granted by the Excise authorities on 26/9/2006, therefore, in terms of Article 1.2 of the said agreement, the effective date of the agreement was 1/10/2006. Further, from the documents it can be seen that for full commercial exploitation of the assessee's expertise in various aspect of liquor manufacturing, the assessee entered into another agreement dated 19/4/2007 with M/s Jagatjit Industries Ltd. for providing various services including complete bottling operation consisting of shifting of all materials, washing of bottles filling/ capping, sealing, inception at various stages, affixing of Excise adhesive, labels over providing of batch number etc, labels, packaging of filling

bottles and shifting of Indian made foreign liquor cases to godown. Thus, the assessee through this agreement also provided M/s Jagatjit Industries Ltd. trained manpower and maintaining of bottling and washing machine at separate packing services. From the records it will be seen that the business of the assessee continued as earlier was done by the assessee regarding manufacturing of Indian made foreign liquor as well as sale of those products and the same was sold in the name of M/s Jagatjit Industries Ltd. It was only the part of the manufacturing unit of the assessee through the proper agreement was given to the entity M/s Jagatjit Industries Ltd. at Rs. 10,00,000/- per month and payments were provided of packaging services at fixed rate of Rs.23.85 case. The rest of the terms as prior to the Government Order of the state of Andhra Pradesh dated 23/11/2005 remains the same. Therefore, the nature of the business of the assessee was never changes as well as the income derived by the assessee is specifically from the manufacturing of liquor activity. Therefore, the Assessing Officer while observing that the assessee has only leased out the unit on a continuous basis and inferring that the assessee is no more doing a business of manufacturing of Indian made foreign liquor is not correct as per the records available before the Assessment Proceedings. Thus, the Assessing Officer and the CIT(A) has not taken a proper perspective of the business income in the context of Income Tax Act. The reliance on the decision of Mysore Wine Products Ltd. (Supra) by Hon'ble Karnataka High Court supports the case of the assessee. In-fact, the Hon'ble Supreme Court in case of Shri Laxmi Silk Mills Ltd. also held that the yield of income by a commercial asset is the profit of the business irrespective of the manner in which that asset is exploited by the owner of the business. The Hon'ble Apex Court further held that the owner is entitled to exploit to his best advantage and he may do so either by using it himself personally or by letting it out to somebody else. The Ld. DR's contentions that the assessee intends to lease out the Unit on a continuous basis and hence, the same should be treated as Income from Other Sources appears to be incorrect as the manufacturing activity of the assessee is going on till date. Thus, case laws relied upon by the Ld. DR as well as the ratio applied by the CIT(A) and Assessing Officer of various decisions does not apply as in those cases the manufacturing activities were not continued. Thus, Ground No.1 and 1.1 of the assessee's appeal is allowed.

23. As relates to Ground No. 2, since the income from packaging services amounting to Rs. 1,27,77,784 is a business income which is based on the packaging agreement between assessee and M/s Jagatjit Industries Ltd. The assessee has not given up at any point of time its own manufacturing activities but was facilitating M/s Jagatjit Industries Ltd. for the benefit of assessee's own business. Therefore, Assessing Officer as well as the CIT(A) was not correct in disallowing packaging services to the assess by holding that it is 'income from other sources'. Ground No. 2 of the Assessee's appeal is allowed.

24. As relating to Ground No. 3, income from resale of raw and packing material amounting to Rs. 63,62,660/-, the same is also business income as the raw and packing material belongs to the assessee irrespective of whether it is used for the manufacturing activities conducted by the assessee or not. Thus, the same is part and parcel of the business activity of the assessee. Therefore, Assessing Officer as well as the CIT(A) was not correct in disallowing this by holding that it is "income from other sources." Ground No. 3 of the Assessee's appeal is allowed. .

25. As relates to Ground No. 4, 4.1 and 5 in the paras herein above we have given a finding that the activities carried out by sub-leasing, packaging and resale of raw material & packing material is a business activity and income derived from the same is business income. During the year under consideration, the assessee incurred personnel expenses amounting to Rs.1,32,38,146 and administrative & selling expenses amounting to Rs. 79.58,872. There is no dispute regarding the genuineness of the above expenses by the Assessing Officer. These expenses were incurred for running the business operations of the assessee including various packaging services provided to M/s. Jagatjit Industries Ltd.. Entire expenses were incurred wholly and exclusively to earn the business income. Salary and wages including PF, ESI, Bonus etc. were paid to labour and the executives of the assessee working for last many years with the assessee. Similar administrative and selling expenses were incurred for running the day-to-day business operations of the assessee company. Being so such expenditure are allowable as business expenditure under section 37(1) of the Act, as allowed in earlier years. Thus, the personnel expenses and administrative & selling expenses, having been incurred by the assessee for earning income by way of lease

rent, from provision of packaging services to M/s Jagatjit Industries Limited and carrying out its own manufacturing and business activities, should be allowed as deduction as per section 37(1) as also under section 57(iii) of the Act. The reliance upon the Hon'ble Apex Court decision in case of Rejendra Prasad Moody (supra) is applicable in the present case. Therefore, Ground No. 4, 4.1 and 5 of the assessee's appeal are allowed.

26. As regards to Ground No. 6, the marketing expenses of Rs. 37,47,447 was paid to Mr. J. Jaiswal who is senior employee of the assessee company stationed at Delhi as well as experienced personnel in liquor business and was looking for the business affairs of the assessee company in respect of the Delhi based company M/s. Jagatjit Industries Ltd. Thus, the expenditure incurred by the assessee is allowable under the provisions of Section 37(1) of the Act. Ground No. 6 of the assessee's appeal is allowed."

6. Respectfully following the decision of the coordinate Bench (supra) we do not find any reason to interfere with the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

7. Decision announced in the open court on 23.11.2022.

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary\*

Date:- .11.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
 ITAT NEW DELHI