

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2912/Mum/2005
(A.Y: 1999-2000)

ACIT – 7(3) Room No. 615, 6 th Floor Aayakar Bhavan, MK Road, Worli Mumbai – 400 020.	Vs.	M/s Wyeth Ltd (Formerly Known as Wyeth Lederle Ltd) Level 6& 7 Plating Plot No. C-59, G Block BKC, Bandra (E) Mumbai - 400098
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC1451A		
Appellant	..	Respondent

ITA No. 2285/Mum/2007
(A.Y: 2003-2004)

DCIT – 7(3) Room No. 615, 6 th Floor Aayakar Bhavan, MK Road, Worli Mumbai – 400 020.	Vs.	M/s Wyeth Ltd (Formerly Known as Wyeth Lederle Ltd) Level 6& 7 Plating Plot No. C-59, G Block BKC, Bandra (E) Mumbai - 400098
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC1451A		
Appellant	..	Respondent

CO No. 184/Mum/2007
(Arising out of ITA No. 2285/Mum/2007)
(A.Y: 2003-2004)

M/s Wyeth Ltd (Formerly Known as Wyeth Lederle Ltd) Level 6& 7 Plating Plot No. C-59, G Block BKC, Bandra (E) Mumbai - 400098	Vs.	DCIT – 7(3) Room No. 615, 6 th Floor Aayakar Bhavan, MK Road, Worli Mumbai – 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC1451A		
Appellant	..	Respondent

Revenue by :	Mr.Tejinder Pal Singh Anand.DR
Respondent by :	Mr.Vishal Karla, Adv & Ms.Rajnandani Shukla, Adv

Date of Hearing	10.11.2022
Date of Pronouncement	28.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the appeals filed by the revenue and the cross objection is filed by the assessee against the separate orders of the passed by the Commissioner of Income Tax (Appeals), Mumbai passed u/s 143(3) and 250 of the Act.

Since the issues in these two appeals are common and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience, we shall take up the ITA No. 2912/Mum/2005 for the A.Y. 1999-2000 as a lead case and the facts narrated. The revenue has raised the following grounds of appeal:

1. *"On the facts and in the circumstances of the case and in law, the Ld. CTT(A) erred in deleting the addition of Rs.8.34,335/- made by the A.O. on account of customs duty benefit against advance license which was not offered for taxation."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CTT(A) erred in directing the A.O. to grant benefit of provisions of section 801111C in. respect of advance import license of Rs.1.23.80.893/- by holding that the same was covered under clause (iiib) of the see. 28 of the Act."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O. to delete the disallowance of expenditure of Rs.1,56,61,000/- incurred under Voluntary Retirement Scheme without appreciating the fact that the expenditure incurred was capital in nature."*

The Appellant prays that the Order of the CIT(A), on the above ground be set aside and that of the A.O. be restored. The Appellant craves leave to amend or alter any ground or add a new ground that may be necessary.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacture of pharmaceuticals, bulk drugs and chemicals. The assessee has filed the return of income for the A.Y 1999-2000 on 31.12.1999 disclosing a total income of Rs. 42,80,90,920/-, subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act was issued. In compliance the Ld. AR of the assessee appeared from time to time and submitted the details. Whereas the AO on perusal of the financial statements and the various information furnished dealt on facts, law and made following disallowances and computed the total income.

i.	payments to club	49,596/-
ii.	Expenses attributable to dividend	1,11,000/-
iii.	MODVAT	4,33,34,198/-
iv.	Advance Licences not offered	8,34,335/-
v.	Share issue expenses	4,10,006/-
vi.	Depreciation disallowed	7,48,456/-
vii.	VRS Expenses	1,56,51,000/-
viii.	Cultivation expenses	78,02,470/-

Finally the AO has assessed the total income of Rs. 49,66,08,540/- and passed the order u/s 143(3) of the Act dated 26.03.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and various judicial decisions and has granted relief to the assessee in some disputes and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the CIT(A) erred in deleting the addition on account of custom duty benefit against the advances which was not offered to taxation and CIT(A) has erred in directing the A.O to grant of benefit u/s 80HHC of the Act in respect of advance import license covered u/s clause (iiib) of Sec. 28 of the Act. The Ld. DR further submitted that the CIT(A) has erred in deleting the disallowance of expenditure incurred under voluntary retirement scheme and supported the order of the A.O.Contra, the Ld. AR relied on the order of the CIT(A) and substantiated the submissions relying on the chart and judicial decisions.

5. We heard the rival submissions and perused the material on record. The LD.DR contended that the CIT(A) erred in deleting the addition of the custom duty benefit against the advance license which was not offered for taxation. The Ld. AR has filed a chart explaining the assessee contentions, we consider it appropriate to refer to the observations of the CIT(A) at Page 8 at Para 8.1 as under:

The Respondent has filed the relevant accounting entries and monthly statement of advance licenses. From these entries /details, it is noticed that the entire amount of accrued Advance Licenses Benefit of INR 1,23,80,093 has been credited to purchase of raw material account. The purchases thus reduced have obviously increased the profit. Therefore, a further addition of the unutilized amount will tantamount to double addition. The Assessing Officer is therefore not justified in making the said addition.

Accordingly, the issue was decided in favour of the Respondent.

6. On the Second disputed issue with respect to non grant of benefit of provisions of Sec. 80HHC in respect of advance import license by holding the same was covered under clause (iiib) of Sec. 28 of the Act. The Ld. AR relied on the decision in the assessee own case for the A.Y 1996-97, [2007] 108 TTJ 889 (Mum).

We consider it appropriate to refer to the observations of the CIT(A) at page 16 Para 13.1 as under:

.....The value of Advance Import License amounting to INR 1,23,80,893 is an export incentive within the meaning of clause 28(iiib) of section 28 of the Act. This is owing to the reason that Duty Entitlement Passbook Scheme ("DEPB") is a cash assistance covered under clause (iiib) of section 28 of the Act and both Advance Import License and DEPB License have common features as both provide the benefit of duty drawback. The only difference between the two is that the Advance Import License is not transferrable whereas DEPB License is transferrable.

However, export incentive is not a part of the profits of the business u/s 80HHC (1), but it is entitled for the benefit of the proviso to section 80HHC(3).

Accordingly he AO is directed to grant the benefit of the proviso to sec 80HHC(3) in respect of export benefit of INR. 1,12,80,893/-

7. On the third disputed issue with respect to disallowance of expenditure incurred under voluntary retirement scheme. Ld. AR relied on the decision of i.CIT Vs. Bhor Industries Ltd., [2003] 264 ITR 180 (Bom); CI Vs. P.I Industires Ltd, [2010] 321 ITR 180(Raj); iii. CIT Vs. Orient Paper & Industires Ltd., [2015] 372 ITR 680 (Cal); vi. KEC international Ltd Vs. DCIT, [2013] 20 ITR (T) 282 (Mum). We refer to the findings of the CIT(A) at Para 14 as under:

The AO has relied upon certain decisions which have no bearing on the issue of allowability of VRS payment.

VRS compensation paid to the employees in pursuance of the scheme approved by the Chief Commissioner of Income-tax, was neither for acquiring any asset nor was it in the nature of capital expenditure rather it was incurred to reduce the cost to ensure conduct of the business in an efficient and profitable manner and the Respondent did not acquire any income yielding asset.

14.3

14.4 Finding:

I have carefully considered the appellant's submissions and the cited judgements. I have also gone through the judgments referred to by the Assessing Officer in his order. The issues concerning the benefit of enduring nature and income-yielding asset have been adequately dealt with by the Supreme Court in the above cited decisions and by the jurisdictional High Court in its judgment in the case of Bhor Industries. Respectfully following the decision of the Bombay High Court in the case of CIT v. Bhor Industries Ltd (264 ITR 180) and in view of a favourable decision in appellant's own case by the ITAT, Mumbai for A.Ys 1984-85 and 1985-86, I direct the Assessing Officer to delete the disallowance of VRS payment of Rs. 1,56,61,000. This ground of appeal is allowed in favour of the appellant.

8. The Ld. DR could not controvert the observations of the CIT(A) with any cogent material or information to take a different view and accordingly we do not find any infirmity in the order of the CIT(A) and uphold the

same and dismiss the grounds of appeal of the revenue.

ITA No. 2285/Mum/2007, A.Y 2003-04

9. The revenue has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in allowing an adhoc amount of Rs. 1,01,13,318/- being 20% of expenditure of Rs. 5,05, 66, 589/- incurred on advertisement as capital expenditure.*

2. *On the facts and in the circumstances of the case. and in law, the Ld. CIT (A) erred in directing the AO to exclude the excise duty and sales tax from the total turnover while computing deduction u/s 80HHC.*

3. *On the facts and in the circumstances of the case directing and in law, the Ld. CIT (A) erred in directing to give benefit of proviso to 80HHC to advance licence benefit as covered u/s 28 (iii) (b).*

4. *The appellant prays that the order of CIT (A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.*

10. We heard the rival submissions and perused the material on record. On the first ground of appeal the Ld. DR submitted that the CIT(A) erred in allowing adhoc deduction being 20% of the expenditure incurred on advertisement. Whereas the Ld. AR

submitted that the CIT(A) considered the all facts and granted the partial relief. We find that the CIT(A) has observed as under:

8. In Ground No. 3 the appellant has disputed adhoc disallowance of Rs. 1,01,13,318/- being 20% of the expenditure of Rs. 5,05,66,589/- incurred on advertisement as capital expenditure.

9. From the records find that this ground has since, assessment year 2000-01, been allowed in favour of the appellant by relying on the decision in the case of DCIT v. Metro Shoes 268 ITR 106 and the decision of Honorable ITAT Mumbai Bench F, Mumbai in the case of M/s Geoffrey Manners and Co. Mumbai. Similarly, following the ratio of these decisions and the reasons of my Id. predecessors, disallowance for the year under appeal is also deleted. This ground of appeal is thus decided in favour of the appellant.

11. On the second disputed issue the Ld. DR submitted that the CIT(A) erred in directing the AO to excluded excise duty and sales tax from total turnover while computing deduction under 80HHC. The Ld. AR supported the order of the CIT(A) and we consider it appropriate to refer to the findings of the CIT(A) on this disputed the CIT(A) has dealt at page 5 Para 18 and 19 read as under:

18. In ground No. 8, the appellant has disputed the action of the AO in holding that sales tax and excise duty should be included in total turnover while computing deduction under section 80HHC.

19. The facts and submissions made in respect of the this ground are also similar to the facts and submissions made in the earlier assessment years. This ground has also been consistently decided in favour of the appellant since assessment year 2000-01. Similarly by following the decisions of earlier years and on the identical reasons, this ground is decided in favour of the appellant. Accordingly, the assessing officer is directed to exclude the excise duty and sales tax from the total turnover for the year under appeal also.

12. On the third disputed issue of appeal, the Ld.DR submitted that the CIT(A) erred in directing the AO to grant the provision of Sec. 80HHC of the ACt in respect of grant of advance import license covered under clause (iii) of the Sec. 28 of the Act. We have decided this ground of appeal in above paragraph 6 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for this case also.

13. The Ld. DR could not controvert the observations of the CIT(A) with any cogent material or information to take a different view and accordingly we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

CO. 184/Mum/2007, A.Y 2003-04

14. Since the revenue's appeal is dismissed and the cross objection becomes infructuous and is also dismissed.

15. In the result, both the appeals filed by the revenue and CO filed by the assessee are dismissed.

Order pronounced in the open court on 28.11.2022.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.11.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)