

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2105 & 2106/Del/2010

Assessment Year: 2005-06 & 2006-07

DCIT Central Circle -18 New Delhi	Vs	Montage Enterprises Pvt. Ltd., C-53, Shashi Garden Gurudwara Mayur Vihar New Delhi PAN No.AACCM8173N
(APPELLANT)		(RESPONDENT)

ITA No.1958 & 1959/Del/2010

Assessment Year: 2005-06 & 2006-07

Montage Enterprises Pvt. Ltd., C-53, Shashi Garden Gurudwara Mayur Vihar New Delhi PAN No.AACCM8173N	Vs	DCIT Central Circle -18 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. M.P. Rastogi, Advocate Ms. Manish Jha, CA
Respondent by	Ms. Sarita Kumari, CIT DR

Date of hearing:	20/04/2023
Date of Pronouncement:	26/04/2023

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

ITA No.2105/Del/2010 and 195/Del/2010 are cross appeals by the revenue and the assessee preferred against the order of the CIT(A)-3, New Delhi dated 16.02.2010 pertaining to A.Y.2005-06.

2. ITA No.2106/Del/2010 and ITA No.1959/Del/2010 are cross appeals by the revenue and the assessee preferred against the order of the CIT(A)-3, Delhi dated 16.02.2010 pertaining to A.Y.2006-07.

3. All these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

4. The assessee is aggrieved by the decision of the lower authorities in holding that the royalty payment of Rs.4.25 crores and the sub license income of Rs.1.96 crores pertains to Jammu Unit. The revenue is aggrieved by the direction of the CIT(A) to exclude only the net expenditure on royalty from the total profit of the eligible unit for the purpose of allowing deduction u/s. 80IB of the Act.

5. This is not the first round of litigation. In the first round of litigation the impugned quarrel travelled up to the Hon'ble High Court and the and the Hon'ble High Court vide order dated 06.09.2018 in ITA No.892 to 895/2016 has held as under :-

“20. We note that the Tribunal in paragraph 5.2 of the impugned order has observed and held that “however due to some unforeseen reasons the assessee could not use the technical know-how neither at Jammu Unit nor at any other units.” This finding of the Tribunal is without considering the findings recorded by the Assessing Officer. The Assessing Officer with reference to the nature of the sachet pouches manufactured at the Jammu Unit had held that the respondent-assessee had manufactured and produced the sachet pouches using the technical know-how provided in terms of the MoUs. The Tribunal reversed the said finding without any discussion and explanation to arrive at a completely , contrary view accepting the contention of the respondent-assessee. No reason and ground have been recorded why the finding of the Assessing Officer was incorrect or wrong.

21. Accordingly, we are of the opinion that the matter requires re-examination by the Tribunal on the question/ whether the Jammu Unit had utilized the technical know-how provided to the respondent assessee company under the MoUs. Till this core and important aspect and question is decided, we cannot proceed and decide, the other question whether the expenditure on royalty was incurred by the Jammu Unit or the Corporate Office.

22. In view of the aforesaid finding in the appeal filed by the Assessee, the Tribunal did not decide the cross appeal filed by the Revenue challenging order passed by Commissioner of Income Tax (Appeals), allowing netting of royalty received from royalty paid for computation of deduction under Section 80-IB of the Act. As we have remanded the issue of deduction under Section 80-IB, it will be open to the Assessee to press their cross appeal before the Tribunal in case of an adverse finding against the assessee on the first issue.

23. The substantial questions of law are accordingly answered partly in favour of the Revenue and against the respondent-

assessee. We have not given and expressed any firm opinion on merits as an order of remand to the Tribunal has been issued for fresh adjudication. In the factual matrix, there would be no order as to costs.

24. To cut short delay, parties are directed to appear before the Tribunal on 15.10.2018 when a date of hearing would be fixed.”

6. Pursuant to the aforementioned decision of the Hon'ble High Court, representatives of both the sides were heard at length. Case record carefully perused and the relevant documentary evidences brought on record duly considered in the light of rule 18 (6) of the ITAT Rules.

7. The assessee is in the business of manufacturing and trading of flexible packaging material having manufacturing facilities at Noida Malanpur, Jammu. Jammu unit was started in A.Y.2005-06 and was eligible for deduction u/s. 80IB of the Act.

8. During the year under consideration the assessee had entered an agreement with one Mr. Ashok Chaturvedi to license and transfer the know-how and technology for the production of improved sachet pouches with additional gusset either on one or both the sides of the sachet with a scoring line in the form of a laser cut. The agreement is placed at page 77 to 81 of the paper book. A perusal of the same show that the assessee was allowed to exploit the technology commercially at its plant located at Bari Brahman, Jammu and other parts of the country.

9. The first error in the assessment order is that the Assessing Officer believed that the technology to be commercially exploited was only for Jammu Unit.

10. Secondly the assessee has been consistently taking a stand that it never exploited the technology at any of its manufacturing Units and has not manufactured the goods exploiting the technology at any of its units.

11. This factual contention of the assessee was never examined by the lower authorities at any stage nor relevant documentary evidences were considered.

12. The excise details which are available from pages 120 onwards have been duly considered by us and in particular the excise reference of Jammu Unit showing packing materials sold by Jammu Unit. On perusal of the evidences we find that only packing materials in roll forms were sold similarly excise reference of Malanpur Unit show packing materials sold in roll forms. We have also considered the list of machinery at Jammu Unit and we find that pouching machine is not in the said list. Even in the copy of submission before the Superintendent Audit Central Excise Jammu wherein the detail of machinery have been given there is also no pouching machine exist. The copy of bills raised by Ashok Chaturvedi is on ultimate flexipacks Jammu showing the service tax registration number on which the billing was made.

13. All these demonstrative evidences show that the assessee never exploited the technology at any of its units. The allowability of royalty payment is not before us as the same has already been considered and allowed by the AO. The only quarrel is whether the royalty payment net of royalty received has to be apportioned amongst the different units of the assessee or has to be considered only at Jammu Unit.

14. Considering the facts discussed here in above we are of the considered opinion that the royalty payment net of license fee received should be apportioned between the manufacturing units of the assessee on prorata basis as done and accepted in case of other corporate expenses. Accordingly the appeal of the assessee is allowed on the point on the issue remanded by the Hon'ble High Court to the Tribunal and that of the revenue is dismissed.

Order pronounced in the open court on 26.04.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .04.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi