

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

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4427/Del/2018
(ASSESSMENT YEAR 2012-13)**

MARC Laboratories Ltd. Plot No.5, 2 nd Floor BN Block, Central Market Shalimar Bagh New Delhi-110 088 PAN-AAACM 2385F	Vs.	Income Tax Officer Ward-16(2) New Delhi
(Appellant)		(Respondent)

Appellant by	Mr. R.S. Singhvi and Mr. Satyajeet Goel, CAs
Respondent by	Ms. Sarita Kumari, CIT- DR

Date of Hearing	17/05/2023
Date of Pronouncement	04/08/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-33, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No. 207/15-16/262/16-17 dated 07/03/2018 against the order passed by Income Tax Officer, Ward-16(2), New Delhi, (hereinafter referred to

as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 26/03/2015 for the Assessment Year 2012-13.

2. The assessee has raised the following concise grounds of appeal:

“1(i) That on the facts and circumstances of the case, the Ld. CIT(A) has erred in partly upholding the disallowance to the extent of Rs.72,36,394/- being claim of sales promotion expense in absence of any dispute with regard to genuineness of the claim.

(ii) That without prejudice to above, the consequential benefit in respect of claim u/s 80IC may be directed to be allowed in accordance with CBDT Circular No.37/2016.

2. That on the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in holding that the amount of Rs.15,93,934/- being payment towards purchase of computers is in the nature of capital expenditure.

3(i) That on the facts and circumstances of the case, the Ld. CIT(A) has grossly erred in upholding disallowance of claim of deduction amounting to Rs.3,29,40,574/- u/s 80IC in respect of Unit-III in total disregard to documentary evidences placed on record.

(ii) That the appellant having satisfied all the pre-condition for a valid claim of deduction u/s 80IC in respect of Unit-III duly support by relevant evidences, there is no valid basis to dispute the statutory claim of deduction u/s 80IC.

4. That the appellant craves leave to add, alter, amend, forgo any of the grounds of appeal on or before or at the time of hearing.

3. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the disallowance of claim of

deduction u/s 80-IC of the Act in the sum of Rs.3,29,40,574/- for Unit-III in the facts and circumstances of the instant case.

3.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee had claimed deduction u/s 80-IC of the Act in respect of Unit-II in the sum of Rs.6,65,112/- and for Manufacturing Unit-III at Baddi @ 100% of profits thereon in the sum of Rs.3,27,40,574/-. There is no dispute with regard to claim of deduction for manufacturing Unit-II at Baddi. At the outset, this is the second year of claim of deduction u/s 80-IC of the Act by the assessee for Unit-III at Baddi. The first year of claim was allowed u/s 143(1) of the Act. Later, this assessment was sought to be reopened u/s 148 of the Act and deduction u/s 80-IC of the Act was denied thereon. The first appeal is pending before the Ld. CIT(A). Hence it becomes incumbent on the part of this tribunal to decide the eligibility to claim deduction u/s 80IC of the Act for the manufacturing unit III at Baddi in this year.

3.2. The main reason for rejection of claim of deduction u/s 80-IC of the Act by the Ld. AO and whether the same is justified are addressed hereunder:-

(a) The manufacturing Unit-III is located in the same premises from which the sister concern of the assessee M/s Marc India Ltd. was running its factory carrying on the same business and claiming deduction u/s 80-IC of the Act up to AY 2011-12. In the said premises owned by sister concern, the assessee had carried out the manufacturing activity and, hence, it is not eligible for deduction u/s 80-IC of the Act. From the above, it could be seen that the Ld. AO had not allowed deduction for Unit-III on the ground that the Unit has been established in the existing premises of the sister concern M/s Marc India Limited. In this regard, we find that the assessee had furnished the rent agreement dated 01/02/2010 entered into between the assessee and Marc India Limited. The copy of the said duly registered rent agreement is placed on record in pages 81 to 82 of the PB and stamp duty paid thereon. Further from the P&L Account of the assessee of the eligible Unit-III, we find that the assessee had debited rent expenses of Rs.6,06,941/-. This entire rent expenditure has been allowed as deduction by the Ld.

AO. Admittedly, this rent of Rs.6,06,941/- includes the rent paid in the factory premises to Marc India Limited also. Further, there is a confirmation from the Himachal Pradesh State Industrial Development Corporation Ltd. vide its communication dated 18/03/2010 addressed to M/s Marc India Ltd. granting permission to Marc India Ltd to rent-out part of its premises to M/s Marc Laboratories Ltd. i.e. (assessee herein). This confirmation is enclosed in pages 89 to 90 of the PB. Hence, the objection raised by the lower authorities in this regard deserves to be dismissed.

b) Yet another ground for disallowance of deduction u/s 80-IC of the Act adduced by the lower authorities is that the assessee has not supported the claim of acquisition of plant and machinery for the new Unit No.III. In this regard, we find that the Ld. AO had passed the assessment u/s 147 r. w. section 143(3) of the Act dated 26/12/2016 for the AY 2011-12 wherein in para 11.1 of his order, there is a specific mention that assessee company has made additions to fixed assets amounting to Rs.329.59 lacs in new plant and machinery and that the assessee company has provided the bills/vouchers for the same vide submission dated 08/01/2016

which had been duly verified by the Ld. AO. This fact clearly goes to prove that the entire bills and vouchers for acquisition of new plant and machinery were indeed filed by the assessee before the Ld. AO in the re-assessment proceedings for AY 2011-12 and the said fact was also submitted before the Ld. CIT(A) during the impugned appellate proceedings. We find that the Ld. AO had duly examined these bills / vouchers for acquisition of plant and machinery for Rs 32959 lacs in re-assessment proceedings of AY 2011-12. Hence, the second objection raised by the lower authorities for denying deduction u/s 80-IC of the Act is dismissed.

(c) Yet another ground for rejection of deduction u/s 80-IC of the Act was that the assessee had not furnished any evidence of the approval obtained from the competent authority such as Department of Industries, Govt. of Himachal Pradesh for setting up of the Unit. In this regard, we find from pages 85 to 86 of the PB that Department of Industries, Govt. of Himachal Pradesh vide communication dated 17/02/2010 has stated that M/s Marc Laboratories Unit-III (assessee's eligible unit) had filed a memorandum expressing its intent to set up a pharmaceutical

formulation (manufacturing services) enterprise. Further, a license in the prescribed form to manufacture that pharmaceutical drugs was granted to the assessee on 29/03/2010 by State Drugs Controlling-Cum- Licensing Authority of Himachal Pradesh at Baddi and the said license validity period was from 29/03/2010 to 28/03/2015. This evidence is enclosed in page 91 of PB. Further, we find that office of Deputy Director of Industries, Single Window Clearance Agency, Baddi, District Salon (HP) vide its letter dated 28/03/2013 had addressed to the assessee and had duly mentioned that the date of commencement of commercial production of Unit-III to be 31/03/2010. This evidence is enclosed in page 93 of the PB. Further, the assessee has also obtained Pollution Control Licence by making an application on 27/03/2010 and obtained No Objection Certificate (NOC) from Himachal Pradesh State Pollution Control Board on 07/04/2010. The evidence in this regard are enclosed at pages 97 to 99 of the PB. Apart from this, the assessee had also incurred electricity expenses of Rs.23,52,623/- for Unit-III. Apart from other expenses, this electricity expenses was also allowed as deduction by the Ld. AO.

Hence, 3rd objection raised by the lower authorities also has no legs to stand.

3.3. We find that the assessee has made total sales of Rs.15,18,22,261/- in Unit-III. After deducting various direct and indirect expenses allocable to Unit -III, the assessee had made net profit of Rs.3,27,40,574/- for which deduction u/s 80IC of the Act was claimed.

3.4. From the aforesaid observations, it could be seen that assessee would be duly eligible for deduction u/s 80-IC of the Act in respect of Unit-III at Baddi. Accordingly, Ground No. 3(i), (ii) & 3 raised by the assessee are allowed.

4. The next issue to be decided in this appeal as to whether the Ld. CIT(A) was justified in partly upholding the disallowance to the extent of Rs.72,36,394/- on account of sales promotion expenses in the facts and circumstances of the instant case.

4.1. We have heard the rival submissions and perused the materials available on record. The assessee is engaged in the

business of manufacturing and sale trading of pharmaceutical products. We find that the Ld. AO had observed that assessee had incurred a sum of Rs.82,86,394/- on account of sales promotion expenses. When confronted with the assessee, the assessee stated that the same represents payments made in respect of gift items, air tickets, foreign trips and hotel expenses spent on the Medical Practitioners. The lower authorities had held that the same would be falling under the ambit of Explanation to section 37 of the Act as incurrence of the said expenditure were in violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the Regulations) as amended on 10/12/2009 imposing a prohibition of the expenses on such freebies from the Pharmaceutical and allied health sector industries on the Medical Practitioners. In this regard, CBDT Circular No.5/2012 dated 01/08/2012 was also issued making these expenses ineligible for deduction u/s 37(1) of the Act. The Ld. AO, accordingly, disallowed a sum of Rs.82,86,394/- as expenditure incurred for violation of law in force by invoking the Explanation to section 37(1) of the Act. The Ld. CIT(A), however, found that out of this sum of Rs.82,86,394, a sum of Rs.10,50,000/- represent expenditure

incurred purely for conference purpose which would be allowable as deduction. Accordingly, the Ld. CIT(A) sustained the addition only to the extent of Rs.72,36,394/- (8286394-1050000). This issue on merits is no longer res-integra in view of the decision of the Hon'ble Supreme Court in the case of *Apex Laboratories Pvt. Ltd. vs. DCIT*, reported in 286 Taxman 200 (SC), wherein it was held that since acceptance of freebies by Medical Practitioners was prohibited as per Circular issued by the Medical Council of India under Medical Council of India (MCI) Regulations, 2002, gifting of such freebies by assessee pharmaceutical company to medical practitioners would also be prohibited by law and thus expenditure incurred in distribution of such freebies would not be allowed as deduction in terms of Explanation to section 37(1) of the Act.

4.2. It is not in dispute that the unit is eligible for deduction u/s 80-IC of the Act and that the said sales promotion expenditure has been incurred by the assessee only in the eligible unit. In view of the CBDT Circular No.37/2016 dated 02/11/2016, pursuant to this disallowance, the deduction u/s 80IC of the Act would automatically get enhanced and thereby making the entire issue

revenue neutral. This is because the disallowance of the aforesaid expenditure would only go to increase the business profit of the assessee from the eligible unit. When the said profits are eligible for deduction u/s 80IC of the Act, in view of the aforesaid circular, the same would be eligible for enhanced deduction /s 80-IC of the Act for the assessee. Accordingly, Ground No.1(i) and (ii) are allowed.

5. The next issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in treating the payments made to Dotcom Creation, Redbrook Intertrade amounting to Rs.15,93,934/- in the facts and circumstances of the instant case.

5.1. We have heard the rival submissions and perused the materials available on record. The lower authorities observed that the assessee had made payments to the following parties:-

1.	Dotcom Creation	Rs. 80,500/-	Purchase
2.	Redbrook Intertrade	Rs.11,09,052/-	Purchase
3.	Redbrook Intertrade	Rs.3,04,492/-	Purchase
4.	Salary Paid to IT Staff	Rs.9,62,627/-	Expenses
	Total	Rs.24,56,671/-	

5.2. The Ld. CIT(A) on considering the Explanation given by the assessee, categorically gave a finding that there was no double deduction claimed by the assessee in this regard. The Ld. CIT(A), however, observed that assessee had not adduced any evidence either before the Ld. AO or before him that the purchases relate to any current asset or stock-in-trade. The Ld.CIT(A) confirmed the disallowance in sum of Rs.15,93,934/- towards the purchase of capital assets and granted deduction in respect of salary expenses paid to IT Staff in the sum of Rs.9,62,627/-.

5.3. The Ld. AR before us argued that this expenditure also was incurred in the eligible unit of the assessee and hence, the same would be consequentially eligible for enhanced deduction u/s 80-IC of the Act in view of the CBDT Circular No.37/2016 dated 02/11/2016. It is not in dispute that the manufacturing unit of the assessee is eligible for deduction u/s 80-IC of the Act. However, there seems to be some confusion as to whether the aforesaid expenditure of Rs.15,93,934/- were incurred in such manufacturing division or not. This is because of the fact mentioned in para 12.1 of the order of the Ld. CIT(A) that the

expenditures were incurred in relation to IT Division. No proper details were submitted by the Ld. AR before us in this regard to clarify this doubt. However, in the interest of justice, we deem it fit and proper to restore this issue to the file of Ld. AO with a clear direction that if aforesaid expenditure pertains to the unit eligible for deduction u/s 80-IC of the Act, then the disallowance of the aforesaid expenditure would only increase the business profit of the eligible unit and correspondingly such increased business profit would be eligible for deduction u/s 80-IC of the Act as per CBDT Circular No.37/2016 dated 02/11/2016. The ld. AO is directed to give a clear finding in this regard as to whether it pertains to eligible unit or not and decide the issue. Accordingly, Ground No.2 raised by the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 4th August, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/08/2023
Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI