

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 5442 /DEL/2012      A.Y. 2005-06**

**ITA No. 5443 /DEL/2012      A.Y. 2007-08**

**&**

**ITA No. 6475 /DEL/2013      A.Y. 2008-09**

DCIT, Circle 13(1), New Delhi.	<u>Vs</u>	Shri Subhas Chander Sehgal, Prop. Ozone Ayurvedics, 1, LSC Block, A-3, Janakpuri, New Delhi-110058 PAN:AATPS8259C
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>		Dr. Rakesh Gupta, Adv. & Sh. Deepesh Garg, Adv.
<b>Department represented by</b>		Ms. Kajal Singh, Sr. DR
<b>Date of hearing</b>		21.06.2023
<b>Date of pronouncement</b>		30.08.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The captioned appeals have been preferred by the Revenue against respective orders of the Commissioner of Income Tax (Appeals)-XVI, New Delhi pertaining to the assessment years 2005-06, 2007-08 and 2008-09. Since some

common issues are involved for adjudication in these appeals the same were heard together and are being disposed of by a common order for the sake of convenience and ITA No. 5442/Del/2012 for A.Y. 2005-06 is made as a lead case.

2. The assessee is an individual and has derived income from salary from M/s Ozone Pharmaceuticals Limited and has also declared business income from its two proprietary concerns, namely, M/s Ozone Ayurvedics and M/s 4<sup>th</sup> D. The firm M/s Ozone Ayurvedics came into existence in F.Y. 1990-91 and M/s 4<sup>th</sup> D commenced business operations from F.Y. 2002-03 and later on converted into independent entity. The proprietary concern M/s Ozone Ayurvedics is engaged in the business of trading and manufacturing of Ayurvedic formulations and cosmetics and the other proprietary concern M/s 4<sup>th</sup> D is engaged in the business of publishing of magazines under the name 4<sup>th</sup> D. Further M/s Ozone Ayurvedics has head office at New Delhi and manufacturing units at Baddi (H.P) and Guwahati (Assam). Unit in Guwahati (Assam) is engaged in manufacturing of Ayurvedic medicines and unit situated at EPIP, Amingaon, Guwahati and manufacturing unit at Bahadurgarh commenced in the year 2004-05 is engaged in manufacturing and trading of Ayurvedic medicines.

2.1 In ITA No. 5442/Del/2012 for A.Y. 2005-06 Ld. AO has narrated sequence of events in previous assessments:

*“It is pertinent to mention here that during the course of assessment proceedings for the A Y 2003-04, due to nature and complexity of accounts of the assessee and considering the interests of revenue involved, the accounts of the assessee were subjected to Special Audi u/s 142(2A) of I T Act, 1961. Assessment u/s 143(3) was completed on 20.11.2006 at a Total Income of Rs16,45,51,530/- as against the Returned Income of Rs 4,21,940/. During the course of assessment proceedings relevant to A Y 2003-04, the books of accounts of the assessee were rejected u/s 142 (2A) and trading results were redrawn. Also, as the assessee has not fulfilled the conditions laid down under Section 80 IB, the deduction claimed in respect of Guwahati Unit u/s 80 IB to the tune of Rs 10,18,64,708/- was also disallowed. Due to numerous discrepancies noticed in the books of accounts, other disallowances have also been made. Penalty proceedings u/s 271 (1)(c) have also been initiated. Also, due to large amount of discrepancies as detailed in the assessment order for A Y 2004-05, deduction u/s 80 IB to the tune of Rs 1,21,84,143/- was not allowed. As each year is a separate year, the submissions made by the assessee in respect to the provisions of I T Act, were examined in detail during the course of assessment proceedings. The conditions prescribed u/s 80 IB in respect of assessee’s business has also been examined in detail.”*

3. Thereafter in the relevant assessment years the learned AO had made additions following previous years and learned CIT(A) has deleted the additions. Accordingly the Revenue is in appeal in respect of A.Y. 2005-06, 2007-08 & 2008-09.

4. At the time of hearing learned AR pointed out that grounds raised by the Revenue are mostly covered in favour of the assessee in assessee’s own case and that has been the foundation of the order of learned CIT(Appeals).

5. Learned DR, however, relied on the order of learned AO, submitting that each year is the separate assessment.

6. After taking into consideration the facts and arguments canvassed the findings in **ITA no. 5442/Del/2012 for A.Y. 2005-06** are made the lead matter and the same shall apply *mutatis mutandi* to the common ground in regard to the other two assessment years 2007-08 & 2008-09.

7. **Ground no. 1 with its sub-grounds (a) to (e);** It can be observed that the learned CIT(Appeals) has dealt with the issue at pages 28 to 33 in para no. 5 with its sub-paras and following the Tribunal order in assessee's own case for A.Y. 2003-04 allowed deduction to the assessee u/s 80-IB of the Act. It is pertinent to observe that there is no change in business activities of the assessee since the findings in A.Y. 2003-04. The relevant findings of CIT(A)'s order are reproduced here below;

*“5.13 In para 23.13 of their order Hon'ble ITAT discussed as to whether the unit of Guwahati was new unit or was a result of splitting up of any other unit. After discussing in detail it was observed that it can be said without any doubt that the appellant purchased new machinery from various places in India, transported them to the Guwahati unit and also obtained transport subsidy, which were installed in the Guwahati unit for production of ayurvedic medicines. The scale of operation in Guwahati unit was far higher in quantitative terms than the scale of operation in the Baddi unit. The medicines produced in Guwahati unit were sold in the local market, while the medicines produced in the Baddi unit were exported to various countries outside India. The appellant also obtained loan from a financial institution on the security of plant and machinery installed in the Guwahati unit. He*

*also obtained capital subsidy from the Central Government. All these facts lead to an inescapable conclusion that the Guwahati unit was newly set up with new machinery for production of Ayurvedic medicines. In view thereof, the Hon'ble ITAT did not uphold the finding of the assessing officer that the business of Baddi unit was carried out from the Guwahati unit."*

7.1 On behalf of the assessee comparative details of A.Y. 2005-06 with A.Y. 2004-05 have been placed in the paper book which show that turnover of Baddi and Guwahati units are increasing and there is no transfer of old machinery of Guwahati unit. Both the units are manufacturing different products and, therefore, their growth profits are not comparable. The cost of production of Guwahati unit is lower as compared to Baddi unit for certain verifiable reasons. Learned AO had observed that books of account were not produced. However, material on record shows that books of account were produced before the learned AO and without any justification books of a/c were rejected. Thus, there is no error in the findings of learned CIT(A). **Ground is decided against the Revenue.**

7.2. As ground no. 1(a) to (e) for A.Y. 2007-08 and ground no. 1 for A.Y. 2008-09 are also common, except for figures and amount for the relevant assessment years and no distinction of facts was pointed out by learned DR, these grounds for A.Y. 2007-08 and 2008-09 are also decided against the Revenue.

8. **Ground no. 2** ; The AO has taken up the issue while giving finding in page nos. 13 to 28 (para 4 with its sub paras). In para 4.12 the learned CIT(A) has

observed that similar additions were made by learned AO by rejecting books of a/c but the Tribunal had deleted the entire addition. A perusal of finding of learned CIT(A) shows that he mentions that he has himself verified the accounts and accordingly observed that there was error on the part of learned AO in rejecting the books of a/c without stating as to how and in what manner provisions of Section 145(3) were applicable. Thus, the application of gross profit rate of Guwahati unit to Baddi unit was rightly deleted by learned CIT(A) and the same requires no interference. **The ground is decided against the Revenue.**

9. **Ground no. 3;** In regard to this ground learned CIT(A) on page no. 33 to 41 (relevant para 6 with sub-paras) has made necessary discussion and learned CIT(A) has concluded that the issue has been considered in favour of assessee by the Tribunal vide order dated 27.2.2009 for A.Y. 2003-04. Learned CIT(A) has duly examined the facts which establish that there was no payments of excessive nature calling for disallowance u/s 40A(2)(a) of the Act. Apparently in the absence of any concrete evidences and evaluating the fair marketing value of the goods and services by learned AO, the *ad hoc* additions were made which have been deleted by the learned CIT(A) and the same require no interference. **The ground is decided against the Revenue.**

9.1. The ground is common with ground no. 2 for A.Y. 2007-08 and ground no. 5 in A.Y. 2008-09, except for figures and amount for the relevant assessment years and no distinction of facts was pointed out by learned DR, so these grounds for A.Y. 2007-08 and 2008-09 are also decided against the Revenue.

10. **Ground no. 4;** The learned CIT(A) has dealt with the issue on page nos. 45 to 50 (relevant para 8 with its sub-paras). Learned CIT(A) has taken into consideration the various expenses and observed that expenses were duly supported by vouchers which were produced before learned AO and no specific instance has been brought on record by AO to justify *ad hoc* addition while the same set of expenses have been earlier allowed. It can be appreciated that learned AO had merely taken into consideration the disallowances made in A.Y. 2003-04 where special audit was conducted without bringing anything adverse in the present assessment year. Thus, **the ground of Revenue is dismissed.**

10.1 The ground is similar to ground no. 6 in A.Y. 2007-08 and ground no. 2 in A.Y. 2008-09, except for figures and amount for the relevant assessment years and no distinction of facts was pointed out by learned DR so these grounds for A.Y. 2007-08 and 2008-09 are also decided against the Revenue.

11. **Ground no. 5;** Learned CIT(A) has considered the issue on page nos. 42 to 45 (para no. 7 with sub-paras). The learned CIT(Appeals) has duly appreciated the

fact that learned AO has not brought on record any specific instance of spending the money by the appellant in connection with M/s Ozone U.K. Limited and the issue has been earlier considered in A.Y. 2003-04, 2004-05 and 2006-07. Learned CIT(Appeals) has also appreciated the fact that even otherwise income of the assessee is claimed to be exempt u/s 80-IB and there was no justification to make the addition. Accordingly the Bench is inclined to decide the ground against the Revenue.

12. **Ground no. 6:** The issue has been considered by learned CIT(Appeals) on page nos. 50 to 53 (para 9 with its sub-paras) and has observed that nature of business of the assessee requires extensive research and development and the Ld. AO, without pointing out any discrepancy in the expenses incurred has disallowed the expenditure. It can also be appreciated that no deduction is claimed by assessee on these expenses incurred and without examining the business expediency the disallowance was made. The findings of learned CIT(A) require no interference. Ground is decided against the Revenue. In assessee's own case for AY 2004-05 vide ITA No. 325/Del/2012 order dated 6/4/23 the Coordinate bench dealing with similar controversy has declined to interfere in the order of Ld. CIT with following relevant findings:

*“8.13 The only grievance of the Revenue is that the real utility of expenses incurred on R&D for assessee's own business is not verifiable and the*

*products of the other concerns are developed by incurring such expenses.*

*8.14 We do not agree. The nature of assessee's business is such that R&D expenditure is a must without which business cannot be run. It is the responsibility of the R&D department to ensure continuous development in the products. It also ensures the quality of raw material so that the products may not be harmful in any manner. The research work being of utmost necessity of the business of the assessee and there being no adverse material on record to substantiate that R&D expenses were incurred for purposes other than assessee's business, we sustain the findings of the Ld. CIT(A) and reject this ground of the Revenue."*

12.1 As there are no distinguishing facts, we respectfully follow the findings of Co-ordinate Bench and reject the ground.

13. **Ground no. 7:** The learned CIT(A) has discussed the issue on page nos. 53 to 58 ( para 10 with its sub-paras) and in Para 10.6 Ld. CIT(A) has considered all the evidences of assessee, including details of the advances recoverable in cash, to conclude that loans were raised for specific purpose and are secured loans. None of the advances is of the nature which is not related to business of the appellant or is given to any of his sister concern. Learned CIT(A) appreciated that it is nowhere stated by the Ld. AO as to which part of the loan was not used by the appellant for business purpose. Moreover, the findings of Tribunal in assessee's own case that the appellant's own fund are much more than the loan raised by the appellant, was also relied by learned CIT(A) to make the deletion and the same requires no interference. The ground is decided against the Revenue.

13.1 Ground is common to ground no. 7 in A.Y. 2007-08 and ground no. 3 in A.Y. 2008-09, except for figures and amount for the relevant assessment years and no distinction of facts was pointed out by learned DR, these grounds for A.Y. 2007-08 and 2008-09 are also decided against the Revenue.

14. **Ground no. 8:** The issue has been discussed by learned CIT(A) on page nos. 58 to 62 (para 11 with its sub-paras) and has observed that all the relevant confirmations were available before learned CIT(A) and during the relevant assessment year no new loan was raised and loans are brought forward balances and the findings of learned CIT(A) thus are on facts which remained uncontroverted. In assessee's own case for AY 2004-05 vide ITA No. 325/Del/2012 order dated 6/4/23, the Coordinate bench dealing with similar controversy has declined to interfere in the order of Ld. CIT with following relevant findings;

*“8.28 We concur with the finding of the Ld. CIT(A) that addition cannot be made for the unsecured credit balances brought forward. For the new unsecured loan obtained by the assessee, confirmation was brought on record. The creditor confirmed having advanced the loan; copy of ITR and bank statement was filed in support. The impugned addition is totally unjustified and the Ld. CIT(A) has rightly deleted the same. The Revenue's ground is rejected.”*

14.1 As there are no distinguishing facts, we respectfully follow the findings of Co-ordinate Bench and reject the ground.

15. **Ground no. 9:** The issue has been discussed by learned CIT(A) on pages 58 to 64 (para 11 with its sub-paras) and observed that the confirmation of payment of dividend from M/s Ozone Pharmaceuticals Ltd. proves the addition in capital account and the factual aspect remained uncontroverted. Thus, the findings of learned CIT(A) deleting the addition require no interference. Ground is decided against the Revenue.

**ITA No. 5443/Del/2012 (A.Y. 2007-08):**

16. **Ground No. 3:** It comes up that learned CIT(A) in paragraph 6 with its sub-paragraph has dealt with the issue. Learned AO disallowed 50% of the expenses incurred on promotion of Ozone Mission by concluding that assessee had purchased sales promotion material such as candles, incense sticks (Agarbatti) etc. from Ozone Mission, which is a trust, to promote products of the Trust rather than promoting its own product. Assessee had explained that the assessee does not get any benefit by making over payment to any entity as entire profit of the unit is exempt u/s 80-IB. Further, justification of genuineness of the transaction was submitted before learned CIT(A) and learned CIT(A) made specific finding that there is nothing in the assessment order to show as to how learned AO concluded that payments made were excessive.

16.1 The Bench is of the considered view that the materials purchased by the assessee from Ozone Mission were having specific designs and logo which were not available in the open market. Thus justification of making the purchases has been duly considered by learned CIT(A). Learned AO does not dispute 50% of the expenses on promotion on the basis of being relevant to the business of assessee thus denying remaining 50% for the reason it also benefited Ozone Mission, which was supplying the promotional material is arbitrary. The finding of learned CIT(A) requires no interference. **Ground no. 3 is decided against the Revenue.**

17. **Ground No. 4:** Learned CIT(A) in paragraph 6 with its sub-paragraphs has dealt with the issue of disallowance of Rs. 1,80,000/- on account of rent paid to sister concern and primarily relying on his own findings for A.Y. 2006-07 deleted the addition. Learned AR has pointed out that Revenue has not preferred any appeal upon this deletion.

17.1 After perusing the reasons for deletion examined by learned CIT(A) in paragraph 7.2, the Bench is of the considered view that the finding requires no interference and even otherwise the issue is settled in favor of assessee as findings in AY 2006-07 are not challenged. **Ground is decided against the Revenue.**

18. **Ground no. 5:** Learned CIT(A) has dealt with the issue of disallowance of Rs. 10,00,000/- on account of purchase transactions with M/s Seagull Drugs (P)

Ltd. In paragraph 8 with its sub-paragraphs, Learned CIT(A) observed that in assessee's own case for A.Y. 2006-07 similar addition was made by the AO on the basis of additions in A.Y. 2003-04, which were deleted by CIT(A). Learned CIT(A) observed that the department's appeal against the findings of learned CIT(A) for A.Y. 2003-04 also stands dismissed by the Tribunal vide order dated 27.02.2009.

18.1 It can be observed that the question of purchase of specific raw-material from M/s Seagull Drugs (P) Ltd., Ayurvedic concern, was examined by the Tribunal in assessee's own case for A.Y. 2003-04, wherein it was concluded that as assessee was using various herbs for preparation of Ayurvedic medicines, which required specific grade of quality of the herbs, therefore, comparison of purchase price with the prevailing market price may not be feasible. In the case in hand, learned CIT(A) has taken into consideration the aforesaid factual aspects to delete the addition and the same require no interference. **Ground no. 5 is decided against the Revenue.**

19. **Ground no. 8:** The ground arises out of disallowance of Rs. 8,82,122/- being the balances outstanding of sundry creditors. Learned CIT(A) in para 12 with sub-paragraphs has dealt with the issue and concluded that from ledger account it was apparent that in all cases balances are coming from the preceding years.

19.1 It appears that learned AO has questioned the existence and genuineness of the parties on the basis that there were no transactions during the year. The Bench is of the considered view that merely because creditors are stable for three years is no reason to make the addition, as the question of remission of liability has not been examined. The fact that there were opening balances itself justifies the existence and genuineness of the parties. Without any evidence that these parties are not business creditors or that parties had denied the transactions, the ground raised by the Revenue has no substance. **The ground no. 8 is decided against the Revenue.**

20. **Ground No. 9:** Learned CIT(A) has dealt with the issue of addition made by AO by disallowing 50% of the depreciation claimed by the assessee on the motor vehicles. Learned CIT(A) has dealt with the issue in paragraph 13 with its sub-paragraphs and it appears that the learned CIT(A) has examined the issue as to whether the amount of depreciation could be less if the vehicles would have been used even for one day. Learned AO has observed that use of vehicles wholly and exclusively for the purpose of business has not been established to deny the depreciation, without being thoughtful, that the same may be a ground to deny the expenses for maintenance or petrol expenditure but as long the asset stands in the name of company depreciation, has to be allowed. Even if there was doubt with regard to use of the vehicle for personal purpose that also does not affect the claim

of depreciation. Learned CIT(A) has duly dealt with the issue in paragraph 13.3 and the same requires no interference. **Ground no. 9 is decided against the Revenue.**

20.1 Ground no. 4 for ITA No. 6475 /DEL/2013 A.Y. 2008-09 is similar to the aforesaid ground as determined against the Revenue and accordingly the same is decided against the Revenue.

21. Consequently the three **appeals of the Revenue are dismissed.**

Order pronounced in open court on 30.08.2023.

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

1. Appellant
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ASSISTANT REGISTRAR  
ITAT, NEW DELHI