

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1025/Del/2018  
(Assessment Year: 2013-14)**

**ITA No.3327/Del/2019  
(Assessment Year: 2014-15)**

ACIT, Circle 11 (1),  
New Delhi.

vs.

M/s. Henkel Anand India Pvt. Ltd.,  
77, Industrial Development Colony,  
Mehrauli Road,  
Gurgaon – 122 001 (Haryana).

**(PAN : AAACH5216Q)**

**CO No.36/Del/2021  
(in ITA No.1025/Del/2018)  
(Assessment Year: 2013-14)**

**CO No.38/Del/2021  
(in ITA No.3327/Del/2019)  
(Assessment Year: 2014-15)**

M/s. Henkel Anand India Pvt. Ltd.,  
77, Industrial Development Colony,  
Mehrauli Road,  
Gurgaon – 122 001 (Haryana).

vs.

ACIT, Circle 11 (1),  
New Delhi.

**(PAN : AAACH5216Q)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Neeraj Jain, Advocate  
Ms. Manisha Sharma, Advocate  
Shri Shubham Sharma, CA  
REVENUE BY : Shri Sanjay Kumar, Sr. DR**

Date of Hearing : 07.02.2024  
Date of Order : 19.02.2024

**ORDER****PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These appeals by the Revenue and cross objections by the assessee are directed against the respective orders of the Id. CIT (Appeals) for the assessment years 2013-14 & 2014-15.

2. Since the issues are common and connected and the appeals and cross objections were heard together, these are being disposed off by this common order.

**REVENUE'S APPEALS :**

3. Apropos disallowance under section 80IC of the Income-tax Act, 1961 (for short 'the Act') : The assessee had, during the relevant year, claimed deduction under section 80IC of the Act of Rs.2,01,79,454/- being 30% of profits of Rs.6,72,64,845/- derived from the eligible business i.e. Parwanoo unit. The same was disallowed by the AO. Ld. CIT (A) vide his order dated 09.11.2017, following the orders passed by the Id. CIT (A) in assessee's own case for AYs 2010-11 to 2012-13, deleted the disallowance of deduction u/s 80IC made by the AO.

4. At the outset, ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by a common order dated 11.04.2018 passed by this Tribunal in assessee's own case for AYs 2009-10 to 2012-13. Ld. DR for the Revenue fairly agreed that the issue is covered in favour of the assessee.

5. We note that ld. CIT (A) decided the issue in favour of the assessee by holding as under :-

“In the present ease, the appellant has submitted that the said issue is covered in favour of appellant by the order of the CITCA) in appellant's own case for preceding assessment years viz., 2010-11, 2011-12 and 2012-13, wherein it was categorically held that the products manufactured by the appellant viz., "Pillar Filler" and "OGX" do not fall under the negative list contained in the Thirteenth Schedule, and therefore, the appellant is entitled to deduction under section 80IC of the Act. Therefore, maintaining judicial discipline and respectfully following the decision of ld. CIT (A), the appeal on this ground is allowed.”

Since ld. CIT (A) has followed earlier order of CIT (A) which has been upheld by the ITAT, we uphold the order of the ld. CIT (A) on this issue and reject the ground raised by the Revenue.

5. Apropos issue of disallowance of royalty expenditure holding the same to be capital in nature : The Assessing Officer disallowed expenditure of Rs.1,50,31,500/- out of total expenditure of Rs.2,00,42,000/- holding the

royalty payment to be capital in nature and covered within the meaning of intangible asset u/s 32(1)(ii) of the Act, after allowing depreciation @ 25% thereon. Ld. CIT (A) deleted the disallowance following the orders passed by the Tribunal in assessee's own case in earlier years. We may gainfully refer to the concluding portion of Ld. CIT (A)'s order as under :-

“In the present case, the appellant has submitted that in appellant's own case for assessment year 2004-05, the Hon'ble Tribunal has allowed royalty fee paid to Henkel KGaA under section 37(1) of the Act as revenue expenditure on the ground that payment was only for right to use the technical know-how and no benefit of enduring nature accrued to the appellant. Following the aforesaid decision, the Hon'ble Tribunal in the assessment years 2008-09 and 2009-10 has also held the royalty expenditure as revenue expenditure. It is pertinent to point out that the appeal filed by the Department against the order of the Tribunal for AY 2008-09 and 2009-10 was dismissed by the Hon'ble Delhi High Court vide order dated 23.09.2013 and 28.2.2017 respectively.”

6. Against this order, Revenue has filed appeal before us.
  
7. Ld. Counsel of the assessee, at the outset, submitted that this issue is squarely covered by the following decisions of and ITAT :-
  - (i) ITAT order dated 28.09.2010 for AY 2004-05 in the case of M/s. Henkel Teroson India Ltd. vs. DCIT;
  - (ii) ITAT order dated 21.03.2012 for AY 2008-09 in the case of ACIT vs. M/s. Henkel Teroson India Ltd.;
  - (iii) ITAT order dated 21.07.2016 for AY 2009-10 in the case of DCIT vs. M/s. Henkel Teroson India Ltd.;

- (iv) ITAT order dated 11.04,2018 for AYs 2009-10 to 2012-13 in the case of CIT, Delhi-IV vs. M/s. Henkel Teroson India Ltd.

8. Respectfully following the precedent as above, we do not find any infirmity in the order of the Id. CIT (A). Accordingly, we uphold the same on this issue.

### **CROSS OBJECTIONS BY THE ASSESSEE**

9. Apropos restriction of tax paid under section 115-O of the Act @ 10% in terms of Article 10 of the Double Taxation Avoidance Agreement (DTAA) between India and Germany : On this issue, we note that this issue has been raised for the first time before the ITAT by way of cross objections. Ld. Counsel of the assessee, at the outset, admitted that this issue has been decided by the Special Bench of the ITAT (Mumbai) in the case of DCIT vs. Total Oil India Pvt. Ltd. (2023) 149 taxmann.com 332 wherein it has been held that the beneficial rate for taxation of dividend under application DTAA is not applicable on the DDT paid on dividends inasmuch as DDT is an additional income tax in the hands of the company and not the shareholder i.e. DDT is a tax liability of the company on the profits it seeks to distribute as dividend and not income in the hands of the shareholder with

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incidence of payment of tax on the company. Accordingly, following the precedent, we reject this objection raised by the assessee.

10. Our above order applies *mutatis mutandis* to both the appeals filed by the Revenue and the cross objections filed by the assessee.

11. In the result, both the appeals filed by the Revenue and the cross objections filed by the assessee are dismissed.

**Order pronounced in the open court on this 19<sup>th</sup> day of February, 2024.**

**Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER**

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

**Dated the 19<sup>th</sup> day of February, 2024  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**