

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : A : NEW DELHI
BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.5077/Del/2019
Assessment Year: 2015-16

Bhagwati Products Pvt. Ltd., 697, Udyog Vihar Phase-5, Gurgaon, Haryana – 122 015. PAN: AACCB1828N	Vs	ACIT Circle-23(1) New Delhi.
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ITA No.5991/Del/2019
Assessment Year: 2016-17

Bhagwati Products Pvt. Ltd., Plot No.21/14, Block-A, Phase II, Naraina Indl. Area, Delhi – 110 028. PAN: AACCB1828N	Vs	ITO, Ward 4(4), New Delhi.
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(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Ms Supriya Mehta, CA
Revenue by	:	Shri Kanav Bali, Sr. DR & Shri Vivek Vardhan, Sr. DR
Date of Hearing	:	07.06.2024
Date of Pronouncement	:	27.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the Assessee against the orders dated Nil and 30.05.2019 of the Commissioner of Income Tax (Appeals)-2, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.CIT(A), Delhi-42/10372/17-18 and 10390/18-19, respectively,

arising out of the appeals before it against the orders passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ITO, Ward 4(4), New Delhi (hereinafter referred to as the Ld. AO).

2. The assessee is a Public Limited Company engaged in the business of manufacturing of tablets, LED'S and telecommunication equipment's and has been claiming deduction u/s 80IC of the Act since AY 2012-13. In AY 2015-16, the assessee filed return of income declaring nil income and the case of the assessee was selected for scrutiny. In the instant year, the assessee has claimed deduction u/s 80IC of the Act amounting to Rs.1,04,35,46,430/- and the AO examined the validity of the claim of deduction and the following components of income were disallowed:-

Interest received on FDR	: Rs.1,97,29,403/-
Foreign Exchange Fluctuation	: Rs.1,54,35,452/-
Discount to Customers	: Rs.3,44,54,329/-
Credit Balances w/o	: Rs. 3,40,073/-
Misc. Income (Insurance Claim etc.)	: Rs. 9,74,510/-
Interest on LIC	: Rs. 1,06,590/-

2.1 The aforesaid have been sustained by the CIT(A) for which the assessee is in appeal raising as many as 12 grounds. However, at the time of arguments, the ld. counsel for the assessee has submitted that grounds No.1 to 10 are not pressed and, accordingly, only ground required to taken is ground No.11(i) and 11(ii) which are reproduced below:-

“11 (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the disallowance of deduction on the following amounts of Rs. 7,10,40,357/- despite the fact that the same are eligible for deduction u/s 80IC of the Act.

i.	<i>FDR Interest</i>	<i>1,97,29,403/-</i>
ii.	<i>Foreign Exchange Fluctuation</i>	<i>1,54,35,452/-</i>
iii.	<i>Discount to Customers</i>	<i>3,44,54,329/-</i>
iv.	<i>Credit Balances w/o</i>	<i>3,40,073/-</i>
V.	<i>Misc. Income (Insurance Claim, etc.)</i>	<i>9,74,510/-</i>
vi.	<i>Interest on LIC</i>	<i>1,06,590/-</i>

11 (ii) That the disallowance has been confirmed in total disregard to judicial precedents in this regard.”

3. On hearing the ld. counsel, it comes up that primarily the contentions raised are similar as were made before the ITO and for that, the ld. counsel has relied the copy of submissions dated 19.12.2017 available at page Nos.47 to 57 of the paper book and the ld. DR has relied the orders of the ld. tax authorities below.

4. Now, with regard to disallowance of interest received on FDR to the extent of Rs.1,97,29,403/- and interest on Letter of Credit (L/C), the claim of the assessee is that in order to manufacture the electronic items, raw materials are imported for which L/C account is opened in bank which requires maintenance of FDRs with the concerned bank. The ld. counsel has submitted that FDRs are maintained for the purpose of clearing the L/C which is connected with the main business of the assessee and reliance in this regard has been placed on the judgement of the coordinate Bench in *ACIT, Circle Haridwar vs. Kirby Building Systems India (Uttaranchal) Pvt. Ltd. and vice*

versa 2016 (1) TMI 397 – ITAT, Delhi, order dated 21-10-2015 wherein the coordinate Bench has held as follows:-

*“11. Ground no. 1 deals with the deletion of income from interest, miscellaneous income and income from foreign exchange fluctuation.
Bank Interest:*

Held .CIT(A) has observed that the assessee has to import raw materials for which it has to open letters of credit. Ld. CIT (A) in his order summarizes submissions of the assessee as under:-

The assessee has to import raw materials for which it has to open letters of credit(LC). The LC is an integral part of the business activity carried on by the assessee. Since pledging of FDR is necessary for drawing LC , the FDR is also an integral part of the business. The ld. CIT(A) at para 1.4 of his order observes that such FD’s had to be made before the raw material could be imported and hence the FD’s were inextricable part of the assessee’s business. We, do not find any infirmity with the findings of the ld. CIT(A). We therefore uphold the action of the ld. CIT(A) in respect of interest of FD’s given as security for LC’s.”

5. As regards to foreign exchange fluctuation, again it is submitted by ld. counsel that the raw materials are imported for manufacturing finished products and, at the time of realizing the payments of the imported raw material there is occasional difference in the exchange rates which lead to gain or loss out of this fluctuation and the same is linked to the main business of the assessee. Reliance is placed on the judgment of the ***Pr. Commissioner of Income tax vs. M/s Reckit Benckiser Health Care India Ltd. 2023 (1) TMI 376 – Gujarat High Court, dated, 03-01-2023*** wherein the Hon’ble High Court has held as follows:-

“5. We have heard the rival contentions and perused the material on record. We are in agreement with the submissions of the assessee that foreign exchange gains are inextricably linked to export of goods and hence have a direct and first degree nexus with the manufacturing activity. The assessee is accordingly eligible for deduction u/s. 80IC on such foreign exchange gain. It would also be useful to refer to the following decisions

which have held that foreign exchange gains are eligible for deduction u/s. 80IC of the Act. In the case of DCIT v. Ansysco [2017] 88 taxmann.com 768 (Chandigarh - Trib.)(UO), the ITAT held that where foreign exchange fluctuations related to export activity carried out by assessee, income earned by assessee on account of foreign exchange fluctuations was to be treated as its trading receipts/receipts from manufacturing activity carried out by it and thereby entitling assessee to claim deduction under section 80-IC on same. Also, in the case of Quadrant EPP SurlonUttranchal (P.) Ltd. v ITO [2017] 88 taxmann.com 261 (Delhi - Trib.), the Tribunal held that since foreign exchange fluctuation arose on account of trading transactions and excess amount received due to upward revision of foreign exchange rate was part of sale proceeds only, said fluctuation was eligible for section 80-IC deduction. We, therefore, find no infirmity in the order of the ld. CIT(A) whereby the disallowance on foreign exchange gain has been deleted.”

6. Reliance is also placed on the judgement in the case of ***DCIT vs. Kirby Building Systems India (Uttaranchal) Pvt. Ltd. and vice versa 2018 (9) TMI 711 - ITAT Delhi, dated 11.09.2018.***

7. As regards the discount to customers, it was pointed out by ld. counsel that there were inadvertent mistake which was pointed out to the AO also that the amount represent the debit note raised by the assessee company in respect of raw material returned back due to defective set of material. The ld. counsel submitted that the assessee could have reduced the amount of purchase by adjusting such debit notes. However, there was a mistake by showing it under the head ‘Other income.’ As we go through the assessment order, we observe that this plea has not been considered at all.

8. Then, coming to the items like ‘credit balances written off’ and ‘miscellaneous income arising out of insurance claim’, etc., it is claimed that these incomes are part and parcel of the business of the assessee and linked with

the main business of the assessee for which reliance is placed on the judgement of the Ahmedabad Bench in the case of *M/s Torrent Pharmaceuticals Ltd. vs. Addl. CIT 2019 (5) TMI 1932 - ITAT Ahmedabad dated 15.05.2019* wherein it has been held as follows:-

“73. We have heard the rival contention and perused the material available on record. The issue in the instant case is whether the miscellaneous income such as Penalty Received from Supplier, Discount Received from Vendors and Export Benefits are eligible for the deduction u/s 80IC of the Act.

73.1 It is an undisputed fact that all the aforesaid income or arising from the activities carried out by the industrial undertaking eligible for deduction under section 80IC of the Act. Therefore we are of the considered view all the incomes are eligible for deduction under section 80A of the Act. Regarding this we find support and guidance from the judgment of Hon'ble High Court in the case of Metrochem Industries Ltd (supra) wherein the head note of the judgment reads as under: ...

73.2 In view of the above, we hold that the assessee is eligible for deduction in respect of the income as discussed above under section 80 IC of the Act. Accordingly, we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed, and the Revenue is dismissed.”

9. Reliance is also placed on the order of the Chandigarh bench in the case of *ACIT, Chandigarh vs. VTL Investment Ltd. 2018 (12) TMI 1759 - ITAT Chandigarh, dated 11.12.2018* wherein the following observations are made:-

“7. So far the issues relating to the non-inclusion of the receipts, on account of interest received from customers on account of delayed payments, the provision of written back and sundry balances written back are concerned, the Ld. counsel has invited our attention to the order of the Tribunal in the own case of the assessee, in the earlier / changed name of the assessee 'Vardhman Yarn & Threads Ltd', in ITA No.530/Chd/2012 & others vide order dated 13.7.2017 and has submitted that while deciding Revenue's appeal bearing No. 569/Chd/2012, the Tribunal has dealt with the issue taken in ground No.3 of the assessee which has been decided in favour of the assessee. We have also examined the details of claim in respect of Misc. receipts which constitute the insurance claim of ₹

1,89,394/- on account of damaged stock, which in our view, is a loss compensated for the damaged stock and thereby it will have effect to reduce the loss / expenditure hence allowable for deduction u/s 80IC of the Act. So far as the receipts on account of interest from customers, provisions written back and sundry balances written back, these undisputedly relate to the business activity of the assessee and from income from the unit of the assessee. So far as the discount on brokerage of ocean freight is concerned, the Ld. Counsel for the assessee has explained that it is discount received by the assessee on payment of brokerage and it will have resulted in netting of the expenditure incurred on account of brokerage and this will go on to increase the business income of the assessee.”

10. Further, for the same proposition of law, order of the Chandigarh Bench of ITAT in the case of DCIT vs. Ansycos Sunrise Complex 2016 (12) TMI 1764, dated 16.12.2016 is relied.

11. We have given thoughtful consideration to the material on record and observe that relying the judgements of the Hon'ble Supreme Court in the case of ***Pandian Chemicals vs. CIT (2003) 262 ITR 278 (SC); Liberty India Ltd. vs. CIT, 317 ITR 218 (SC); and CIT vs. Sterling Foods (1999) 237 ITR 579 (SC)***, the disallowances have been sustained on the basis that these incomes cannot be held to be derived from the business activity exempted u/s 80IC of the Act. However, we are of the considered view that the components of income/deduction u/s 80IC is denied to the extent of Rs.7,10,45,307/- are all those incomes which arise out of the main activity and activities which are integral part of the business of the assessee. There is direct or immediate nexus of the source of incomes with the appellant's industrial undertaking. The word "derived from" has to be construed to include situations, where the income arose from something having a close connection with the industrial undertaking itself.

The judgment which the CIT(A) has relied are distinguishable in the light of the fact that these components of income were not in issue directly or indirectly. In ***Pandian Chemicals Case*** interest earned was on the deposit made with the Electricity Board for the supply of electricity to the appellant's industrial undertaking. In ***Liberty India Ltd and Sterling Foods*** it was case of questioning nexus between the receipt by way of duty drawback/DEPB benefit and the industrial undertaking. Thus, we are inclined to allow the ground No.11 and, consequently, the appeal of the assessee is allowed.

12. In regard to assessment year 2016-17, it comes up that there is no dispute on deductions disallowed u/s 80IC and only the enhancement of income is challenged by following grounds:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in making enhancement without following due procedures as prescribed under the law.

(ii) That the learned CIT(A) has erred both on facts and in law in making enhancement without serving any show cause notice in violation of principle of natural justice.

3. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in making enhancement by disallowing deduction u/s 80IC claimed by the assessee on the other incomes.

(ii) That the disallowance has been made despite the fact that other income on which deduction has been claimed by the assessee is

directly attributable to the manufacturing activity of the assessee and therefore eligible for deduction.

4. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

13. In this context, it comes up that in para 6.7 the CIT(A) observes in the order for AY 2016-17 as follows:-

“6.7 Enhancement of income: As noted in A.Y. 2015-16 by the AO, the appellant has claimed deduction on other incomes not attributable to the manufacturing activity and disallowed by the AO. The same was confirmed by CIT(A). In the impugned year, there is no such narrative in the assessment order. Following the earlier Appellate order, the AO is directed to add the other incomes not attributable to manufacturing activity after verification. The income is enhanced accordingly.”

14. The Id. DR could not dispute the fact that before the enhancement no notice was served on the assessee. That being the admitted fact, the enhancement cannot be sustained and, accordingly, the ground is allowed and the appeal of the assessee is allowed.

15. Resultantly, both the appeals are allowed.

Order pronounced in the open court on 27.06.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 27th June, 2024.

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Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi