IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Amit Shukla (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 1521/Mum/2004 (A.Y. 1999-2000)

M/s. Marico Industries Ltd. Rang Sharda, K.C.Marg Bandra Reclamation Mumbai-400 050. PAN : AADPS3069C	Vs.	ACIT, CC-35 Room No. 104 First Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri Nitesh Joshi & Shri Milin Bakhai
Department by	Shri Ashok Kumar Ambastha
Date of Hearing	13.06.2024
Date of Pronouncement	05.09.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

In the above cited appeal, the learned Assessing Officer (Ld. AO for short) made certain additions which were disputed by the appellant company. The Ld. CIT(A) confirmed the additions made by the Ld. AO and aggrieved by the orders of the Ld. AO and the Ld. CIT(A), the appellant company filed this appeal before Hon'ble ITAT, Mumbai on the following issues :-

i) Sales tax refund received by the appellant company under section 41(1) of the Income Tax Act (the Act for short).

ii) Restricting deduction u/s. 80IA of the Act relating to Goa and Kanjikode Industrial Undertakings of the appellant company.

iii) Allocation of interest of dealership deposits and bank guarantee commission to the Goa and Kanjikode Undertakings for computation of profits eligible for deduction u/s. 80IA of the Act.

iv) Allocation of certain percentage of expenses of Research and Development (R&D for short) expenses to Goa and Kanjikode Undertakings for computing profits eligible for deduction u/s. 80IA of the Act.

v) Adjustment made to the profits eligible u/s. 80IA in view of various additions/disallowances made by the Ld. AO.

vi) Reduction of profits eligible for deduction u/s. 80HHC of the Act claimed by the appellant company.

2. Apart from the above additions/disallowances made by the Ld. AO, the appellant company raised 2 additional grounds relating to consequential relief in respect of exclusion of capital component of lease rental while computing taxable income and deduction of provision for advertisement and sales promotion expenses.

3. Now each ground of appeal raised by the appellant company are dealt with as follows :-

Ground No. 1 : Addition of refund from sales tax department u/s. 41(1) of the Act.

3.1) Pursuant to the appellate order passed by Deputy Commissioner of Income Tax (Appeals)-II, Jaipur, Commercial Tax Officer the Ld. AO determined certain refund due to the appellant company by his order dated 22.3.1999. As the appellant company has not admitted the same as income, the Ld. AO made addition treating the same as “deemed income” and made an addition u/s. 41(1) of the Act as the appellant company was following mercantile method of accounting and the order of refund by the Sales Tax Authority was passed in the month of March, 1999 and income would be assessable in the A.Y. 1999-2000.

3.2) The Ld. CIT(A) relied upon the Judgment of Hon'ble Apex Court in the case of Polyflex India (P) Ltd. Vs. CIT, 257 ITR 343 to uphold the addition made by the Ld. AO.

3.3) During the hearing proceedings before the Hon'ble ITAT, Mumbai, the appellant company has argued that though the Ld. CIT(A) relied upon the decision of Hon'ble Apex Court, his observations on the said Judgement would actually support the appellant's case because it was mentioned that income would be chargeable to tax in the year in which said appeal relating to sale tax issue attains finality. In the impugned case, the Sales Tax Department has filed further appeal and refund was not granted to the appellant company and instead the same was adjusted by the Sales Tax Department for other demands. Thus, the appellant company has not received/obtained refund and hence even on mercantile system of accounting, the appellant company has not received refund from the Sales Tax Department and section 41(1) of the Act is not applicable to it. It was further pleaded that Hon'ble Kerala High Court in the case of Carbon and Chemicals (I) Ltd. Vs. CIT, 433 ITR 14, it was held that such additions u/s. 41(1) under deeming provisions can be applied only when the appellant company actually receives refund, but not when the refund was determined, but not refunded. In other words, Sales Tax refund can be added only when the appellant company actually receives refund. Even the Ld. CIT(A) also has agreed that the addition can be sustained only when the appeal attains finality.

3.4) Ld. DR supported orders of Ld. AO and the Ld. CIT(A) for the proposition that the sales tax refund should be assessed in this assessment year only as the appellant company was following mercantile system of accounting and also for the reason that the amount adjusted is equivalent to refunded.

3.5) After thoughtful consideration, the Bench decides that the addition can be made only in the year in which appellant company actually receives refund from the Sales Tax Department and when the appeal attains finality, as observed by the Ld. CIT(A) in his order. Meaning of "obtained" as decided

by Hon'ble Kerala High Court also supports the view of Ld. AR of the appellant company. Hence, the addition made by the Ld. AO cannot be sustained in the current assessment year. But, the addition has to be made in the year of actual receipt of refund from Sales Tax Department. Appeal of the Revenue on this ground is dismissed.

4. Ground No. 2 : Allocation of Corporate overheads and depreciation while computing deduction u/s. 80IA of the Act.

This issue was discussed by the Ld. AO in paragraph 4(i) of the assessment order at page No. 2&3 and paragraph 8 of the Ld. CIT(A)'s order at page 8&9. Ld. AR of the appellant company has brought to the notice of the Bench that this issue was concluded by the ITAT's order in appellant's own case in its favour for A.Y. 1998-99. Relevant discussion starts from paragraph 12 page 8 and findings of Hon'ble ITAT are in paragraphs 25 to 27 at page No. 20-22 of the order. Respectfully following the previous order of the ITAT, the addition made by the Ld. AO and confirmed by the Ld. CIT(A) is deleted. This ground of the appellant is allowed.

5) Ground No. 3 : Allocation of Research and Development Expenses to the Goa and Kanjikode Undertaking and restricting deduction claim by the appellant company u/s. 80IA of the Act.

5.1) The Ld. AO held that a portion of research and development expenses should be allocated to the Goa and Kanjikode Units and the deduction claimed u/s. 80IA was restricted. The Ld. CIT(A) has confirmed the addition.

5.2) At the time of hearing, Ld. AR of the appellant brought to the notice of the Bench that research and development expenses were not related to the products which are being manufactured at the Goa and Kanjikode units and hence restriction u/s. 80IA cannot be made by the Ld. AO. In Goa and Kanjikode Units, only parachute coconut oil was being manufactured whereas research and development expenses related to other products like saffola, sweekar, hair and care etc. The Ld. CIT(A) has confirmed the

addition made by the Ld. AO for the reasons mentioned in his order. Ld. AR of the appellant brought to the notice of the Bench that this issue was covered in his favour for A.Y. 1995-96 by the Hon'ble ITAT, Mumbai order dated 28.2.2007, where it was held that the research and development cost is to be allocated eligible units, where research and development is carried out with respect to the product manufactured at that unit. Ld. AR of the appellant contended that this issue was covered by Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Pvt. and in the case of Hindustan Unilever Ltd. also. In view of the same, it was pleaded that the addition made by the Ld. AO, confirmed by the Ld. CIT(A) should be deleted.

5.3) Ld. DR relied on the orders of the lower authorities.

5.4) After hearing both sides, it was decided to follow decision of Hon'ble ITAT in appellant's own case for A.Y. 1995-96 in principle, but the Ld. AO is directed to see whether in these two units, only parachute oil is manufactured and if the R&D expenditure claimed by the appellant does not relate to Parachute oil manufacturing then appellant would succeed in his argument. After verifying the factual position, Ld. AO is directed to take decision accordingly.

6) Ground No. 4 : <u>Allocation of interest of dealership deposits and bank guarantee commission to the Goa and Kanjikode Units for deduction u/s. 80IA of the Act.</u>

6.1) The Ld. AO is of the opinion that a portion of interest on dealership deposits and bank guarantee commission should be allocated to the Goa and Kanjikode Units while computing profits eligible for deduction u/s. 80IA of the Act. Accordingly he has allocated a portion of interest while computing interest u/s. 80IA of the Act. The Ld. CIT(A) agreed with the argument of the Ld. AO and confirmed the addition. Aggrieved by the orders of the Ld. AO and the Ld. CIT(A), the appellant company came on appeal before the Bench on this issue.

6.2) Ld. AR of the appellant company has argued that these two undertakings were generating cash surplus month after month and they have not utilised any part of the dealership deposits, in fact, these two undertakings are providing funds to the head office and not seeking funds from the head office and hence deduction u/s. 80IA should not be restricted as mentioned by the Ld. AO in the assessment order. The Ld. AR of the appellant has mentioned that this issue is covered in its favour by the order of Hon'ble ITAT in earlier year vide paragraph 28 to 32 at pages 22 to 26. Hence, it was pleaded that the addition made by the Ld. AO should be deleted.

6.3) The Ld. DR has supported the orders of the Ld. AO and the Ld. CIT(A).

6.4) After hearing both sides, it is decided to respectfully follow the order of the ITAT of the earlier year in principle in this year also. But, the Ld. AO is directed to verify these units are generating surplus in this year also and if so, the order of Hon'ble ITAT of earlier year had to be followed by him. Accordingly, Ld. AO may take a decision based on facts.

7) Ground No. 5

7.1) Ld. AR of the appellant has mentioned that this is already covered in other grounds and not pressed. Hence, ground is dismissed as not pressed.

8) Ground No. 6 : The appellant has submitted that the Ld. CIT(A) is not correct in holding that the quantum of deduction u/s. 80HHC is to be reduced in view of the provisions of section 80IA(9A) of the Act. The appellant company claims that it is entitled to deduction u/s. 80IA of the Act in respect of profits derived from Goa and Kanjikode Units and independent of this deduction, the appellant company is entitled to deduction u/s. 80HHC also of the Act in respect of profits derived from export of goods outside India. The Ld. AR of the appellant company had argued that without any discussion in

the assessment order, the Ld. AO has simply reduced profits eligible for deduction u/s. 80HHC of the Act.

8.1) The Ld. CIT(A) relied on the provisions of section 80IA(9A) of the Act to uphold the position taken by the Ld. AO. Aggrieved by this reduction of deduction claimed by the appellant company, Ld. AR of the appellant has placed reliance on the Judgment of Hon'ble Bombay High Court in the case of Associated Capsules (P) Ltd. Vs. DCIT 332 ITR 42.

8.2) During the course of hearing before the ITAT, Ld. AR of the appellant relied on this decision. Hon'ble Bombay High Court has held in this case that section 80IA(9A) of the Act will not have any application at the stage of computation and it will come into application only at the stage of allowing deduction. In other words, Hon'ble Bombay High Court has held that combined deduction u/s. 80IA & 80HHC cannot exceed gross total income.

8.3) Ld. DR relied on the order of the Ld. CIT(A).

8.4) After hearing both sides, it is seen that the Ld. AO has not given any reasoning for reducing deduction claimed u/s. 80HHC of the Act. Here, the facts are not very clear. The Ld. AO is directed to see facts and figures submitted by the appellant company in this connection and follow the decision of Hon'ble Bombay High Court in the case of Associated Capsules (P) Ltd. (supra) as mentioned above.

9) The Appellant has raised two more additional grounds relating to shunt capacitors given to Rajasthan State Electricity Board (RSEB for short) on lease and advertisement and sales promotion expenses.

9.1) During the hearing proceedings before the Bench, Ld. AR of the appellant pleaded that if the sale and lease back transaction related to RSEB is treated as finance lease, then lease rental has been bifurcated between principal component and the interest component and the principal component cannot be brought to tax. As this ground was not taken up before

the lower authorities, the matter is remitted to the file of the Ld. AO. The Ld. AO is directed to take all the submissions and explanations of the appellant company and decided the matter on merits.

10) Additional ground relating to advertisement and sales promotion.

10.1) During the hearing proceedings, Ld. AR of the appellant has stated that deduction for the provision for advertisement and sales promotion was not allowed by the Department and the same was added back while computing income. As this ground was not adjudicated by the Ld. AO/the Ld. CIT(A), and also the issue is raised for the first time before the Bench, it is decided that this issue will go back to the file of the Ld. AO. The Ld. AO is directed to take all the submissions and explanations with regard to the provision for advertisement and sales promotion expenses and pass an order on merits.

11) Appeal of appellant is partly allowed as above.

Order pronounced in the open court on 5th September, 2024.

Sd/-	Sd/-
(Amit Shukla)	(Omkareshwar Chidara)
Judicial Member	Accountant Member

Mumbai : 05.09.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

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