

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH

HYBRID HEARING

**BEFORE HON’BLE SHRI RAJPAL YADAV, VICE PRESIDENT AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपीलसं./ ITA No.742/CHANDI/2009
(निर्धारणवर्ष / Assessment Year: 2006-07)

ACIT Circle 5(1) SCO 40-41, Sector 17-A Chandigarh – 160017	बनाम/ Vs.	M/s Venus Remedies Ltd. SCO 39, Sector – 26 Chandigarh
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACV-6524-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Parikshit Aggarwal (CA), Sh. Jaspal Sharma (Advocate)&Ms. Shruti Khandelwal (Advocate) – Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Yamini (CIT) - Ld. DR (Virtual)

सुनवाईकीतारीख/ Date of Hearing	:	02.02.2026
घोषणाकीतारीख / Date of Pronouncement	:	09.03.2026

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal for Assessment Year (AY) 2006-07 has come up for hearing before us pursuant to the directions of Hon’ble Punjab & Haryana High Court in revenue’s appeal ITA No.81-2012 dated 25-07-2024 wherein following substantial questions of law were determined: -

1. *Weather on the facts and in the circumstances of the case, the Hon’ble ITAT was right in upholding the decision of Ld. CIT(A) who directed the AO to reallocate the expenses on sales ratio and to reduce the addition to Rs.142.24 Lacs as against the addition of Rs.7,61,96,306/- on account of unexplained expenditure u/s 69C?*

2. Weather on the facts and in the circumstances of the case, the Hon'ble ITAT was right in upholding the decision of Ld. CIT(A) vide which relief on account of disallowance u/s 80IC amounting to Rs.8,76,27,511/- was allowed?

3. Weather the Hon'ble ITAT was right in law in accepting CIT(A)'s method of not apportioning part of expenditure relating to the financial costs of Rs.1,93,15,643/-, Depreciation of Rs.1,63,04,928/-, Capital Expenditure on R&D u/s 35(2) of Rs.3,00,67,328/- and deferred revenue expenses on scientific research u/s 35(2) of Rs.1,55,36,344/- to the Baddi unit for purposes of determining deduction u/s 80IC, when the assessee had not produced separate books of accounts for the two units in the course of assessment proceedings?

1.2 The concluding directions of Hon'ble Court at Para-7 are as under: -

7. As regards question No.1 framed at the time of admission, we find that the reallocation expenses on sale ratio could have been done and accordingly, question number one is answered in favour of the assessee. However, two questions namely question Nos.2 and 3 stand answered in favour of the revenue in view of our observations hereinabove and we direct that the order passed by the CIT (Appeal) as well as ITAT on the aforesaid aspect are quashed and set aside and the matter is remanded back to the ITAT to decide on the aforesaid questions afresh after considering the effect and operation of subsection 4 of 80IC of the Act, 1961. The appeal is accordingly allowed to the said extent.

1.3 In terms of these directions, we proceed to adjudicate question nos. 2 & 3 as raised by the revenue. On this aspect, Ld. AR advanced arguments and referred to various documents on record. The written submissions have also been filed. The Ld. CIT-DR also advanced arguments supporting the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Chronology of Events

2.1 In the return of income, the assessee claimed deduction u/s 80IC for Rs.876.27 Lacs in respect of its Baddi Unit. The assessee was having another unit at Panchkula. The assessee is stated to be engaged in manufacturing and trading of pharmaceutical products. The Ld. AO doubted

assessee's claim u/s 80IC on the ground that Baddi Unit generated profit rate of 59.95% as against 11.78% as reflected by Panchkula Unit. The assessee was questioned on the same. Though the assessee supported its claim, Ld. AO did not agree with the claim of the assessee. One of the observations, in para-5 of the assessment order, was that the assessee transferred its R&D equipment for Rs.219.56 Lacs from Panchkula Unit to Baddi Unit on 31-03-2006. The Baddi Unit reflected Plant & Machinery for Rs.196.28 Lacs besides R&D equipment for Rs.219.56 as stated to be transferred from Panchkula Unit. The total installed Plant & Machinery at Baddi unit was for Rs.415.85 Lacs out of which 52% (Rs.219.56 Lacs) Plant & Machinery was transferred from old Panchkula Unit. As per Ld. AO, the assessee could not furnish proof of newly purchased machinery as transported to Baddi and also could not establish installation of machineries at Baddi unit. The assessee also failed to furnish GRs and freight bills to establish transportation of machinery at Baddi. The Ld. AO held that transfer of Machinery from old Unit to new unit was not permissible as per sub-section (4) of Sec.80IC of the Act which provides that the undertaking or enterprise should not be formed by transfer to a new business of machinery or plant previously used for any purpose. As per Explanation-2 to Sec.80IA(3) (as applicable to this section also), such transfer could not exceed 20% of total value of Plant & Machinery used in the business. Therefore, at least 80% of the Machinery should be newly purchased whereas in assessee's case, 52% of the Machinery was transferred from old unit to new unit and therefore the assessee was not entitled for the said

benefit u/s 80IC. Finally, the impugned deduction was denied to the assessee.

2.2 In the alternative, Ld. AO went on to examine higher profit of approx. 60% as reflected by the assessee against Baddi Unit. The Baddi unit started manufacturing from November, 2005 whereas Panchkula unit was well established since 1991. After examining the books of accounts, Ld. AO observed many discrepancies. Finally, the deduction u/s 80IC was denied and Ld. AO estimated profit rate of 12% for Baddi Unit and disallowed excess expenditure as claimed by the assessee against Baddi unit u/s 69C. The excess expenditure worked out to be Rs.761.96 Lacs.

2.3 During first appeal, the assessee's submissions were subjected to remand proceedings. The Ld. AO furnished remand report on 31-03-2009 which was confronted to the assessee. The assessee contended that separate books were maintained for both the units. The ledger relating to Baddi Unit which was impounded was still lying in the custody of Ld. AO. At many places, Ld. AO discussed about transfer entries from one unit to another which prove the fact that separate books were maintained for both the units. Separate books were also furnished before Ld. CIT(A) on 30-03-2009. The complete books along with bills / vouchers were again produced before Ld. AO on 06-04-2009 which were duly verified by Ld.AO.

2.4 On the issue of Plant & Machinery, the assessee contended that the Plant & Machinery of Baddi unit was duly supported by documents / vouchers. Separate books were maintained for each of the unit. The file containing all original invoices, transport receipts and all other related documents relating to R&D equipment were duly furnished before Ld. AO

as well as before Ld. CIT(A). The list of R&D equipment and all copies of bills / transportation bills and other documents relating thereto were duly submitted to Ld. AO for further verification. The attention was drawn to the fact that the place of destination of the R&D equipment as mentioned in the invoices and LRs and other documents was *Baddi (HP)* proving that the equipment were new and originally transported and installed at Baddi unit only.

2.5 Another remand report was received from Ld. AO on 15-04-2009. The Ld. AO observed that the assessee purchased R&D equipment from M/s Yuhua Asia Group Ltd., China. Upon enquiry from website, it was nowhere mentioned that the said entity was engaged in manufacturing and sale of R&D equipment. The assessee also could not produce evidence in the form of RBI's sanction for import of R&D equipment.

2.6 The assessee again contended that all the entries relating to purchase of R&D equipment were in the books of Head Office which were transferred to Baddi Unit at the year-end because the equipment pertained to Baddi unit. The books containing such details were furnished to Ld. AO. The ledger account and bank books were also furnished for verification. There was no requirement of RBI sanction for import of R&D equipment. The confirmed copies from the suppliers were also furnished in support of purchases transactions. The facts mentioned on the website would not be conclusive proof in view of evidences placed on record particularly the confirmation of the supplier i.e., M/s Yuhua Asia Group Ltd. certifying that the payment was duly received by them against equipment as supplied to the assessee's Baddi Unit as per Bills numbers as mentioned herein. A

note had been given at the bottom declaring that the products sold to the assessee were not manufactured by them but they were trading into these products as per the requirement of the customers. The assessee thus duly discharged its onus by placing on record all the relevant documents and therefore, the objections of Ld. AO had no basis.

2.7 The adjudication of Ld. CIT(A) is contained in para-16 onwards. The Ld. CIT(A) concurred that the assessee had produced books of accounts along with vouchers before AO as well as before him. The hearing was conducted in the presence of AO who also went through the books of account. The assessee contended that the entries of R&D equipment were wrongly passed in the books of Head Office due to clerical error. The same was transferred to Baddi unit by way of transfer entry. Though the asset was shown in the books of Head Office, however, there was reference of fixed asset, Baddi. The same would show that the equipment belonged to Baddi Unit only. The assessee furnished copy of invoices which bear the address of Baddi unit only. The assessee also furnished copy of transport receipt wherein the consignee had been mentioned as 'Baddi'. The assessee furnished copies of transporters' bills in respect of all the items. In every voucher, there was mention of Baddi unit. Therefore, the assessee had given sufficient material to prove that R&D equipment belonged to Baddi Unit only and this was also transferred to Baddi unit. All these documents were confronted to the AO who raised a new issue by putting a doubt on the supplier. The assessee also placed on record sufficient material from the website to show that the supplier was a genuine entity. Therefore, Ld. AO was not justified in rejecting the books of account and

denying deduction u/s 80IC. Therefore, the action of Ld. AO in rejecting books of accounts was reversed and it was held that the assessee would be entitled for deduction u/s 80IC.

2.8 The Ld. CIT(A), thereafter, went on to adjudicate the quantum of deduction that would be available to the assessee. The assessee, in its various replies, refuted the allegation of Ld. AO. The adjudication of Ld. CIT(A) is contained in para-32 onwards. It was held by Ld. CIT(A) that assessee did not apportion certain expenses between the two units in a rational way. There were common expenditure which were to be allocated on the basis of sales ratio. This expenditure was in the nature of rate, fees & taxes, salary & other benefits, employees' compensation expenses, legal & professional expenses, postage, telex and telegram, auditor's fees, directors' remuneration, other corporate expenses, remuneration of R&D staff, R&D expenses, material used for development of new products. The R&D expenses as incurred by the assessee would benefit the Baddi unit also. The Baddi unit progressed primarily on account of R&D activity as conducted by the assessee. The counsel for the assessee agreed that allocation of common expenses in sales ratio would be a reasonable basis. The assessee, in fact, allocated certain expenses in sales ratio other than interest which was allocated on actual basis. The assessee furnished working of expenses in the sale ratio which resulted into allocation of more expenditure in Baddi unit to the extent of Rs.129.71 Lacs. If the financial expenses are allocated in the ratio of investment instead of sales ratio as allocated by the assessee, the said figure would work out to be Rs.142.24 Lacs. The working of the same has been tabulated at para-40 of the

impugned order. The same was accepted by Ld. CIT(A) and the profit of Baddi unit was reduced to that extent. Finally, the appeal was partly allowed.

2.9 The adjudication of Ld. CIT(A) led to revenue's appeal to Tribunal vide ITA No.742/Chandi/2009 and assessee's cross-objections CO No.51/Chandi/2009 which stood disposed-off on 21-11-2011. In cross-objection, the assessee objected to reduction in profit to the extent of Rs.142.24 Lacs. However, the assessee withdrew its objection and thus, this matter attained finality so far as the assessee is concerned. However, the revenue assailed this issue before Hon'ble High Court wherein the issue was admitted as question no.1 and the same has finally been settled in assessee's favor. Thus, this issue has attained finality for all purposes.

2.10 The revenue, by way of other grounds before Tribunal, primarily raised the issue of deduction u/s 80IC for Rs.876.27 Lacs and disallowance of unexplained expenditure u/s 69C for Rs.761.96 Lacs. The same was adjudicated by the bench as under: -

6. Aggrieved by the aforesaid addition, the assessee filed appeal before the Id. CIT(A). After taking into account all the relevant aspects of the case, the Id. CIT(A) held that the NP rate in respect of Baddi unit was higher than the Panchkula unit due to the fact that the assessee had not properly allocated the expenditure. In this view of the matter, he proceeded to allocate the expenses as under: -

"40 Keeping in view all the material on record, I am of the view that the assessee should have apportioned the expenses in sales ratio. The assessee has given a working wherein the expenses to the extent of Rs.142.24 lacs will be reduced in respect of Panchkula unit. The same is reproduced as under:-

(Rs. in lacs)

Particulars	H.O	Panchkula	Baddi	Total
Sales	--	7661.42	1545.82	9207.25
(%)		83.21	16.79	100.00
Administration expenses	--	315.37	28.43	353.80
Selling & Distribution (except excise duty)	--	198.06	13.97	212.03
R&D Expenses	--	87.86	--	87.86
Capital expenditure on R&D u/s 35(2)	--	300.67	--	300.67
Deferred revenue expenditure on R&D u/s 35(2)	--	155.36	--	155.36

	--	1057.32	42.40	1099.72
Percentage (%)	--	96.14	3.86	100.00
Expenditure in sales ratio	--	915.08	184.64	1099.72
Difference		(142.24)	142.24	--

41. Reliance is placed on the decision of Hon'ble ITAT in the case of Coral Telecom Ltd in ITA No. 203/Chandigarh/2005 (copy placed at Annexure -9) has upheld the application of apportionment of expenses in the ratio of sales. The Hon'ble ITAT has discussed this issue from para 15 to 27 of its order.

42 The AO has not made addition on account of reallocation of expenses in respect of Baddi unit and Panchkula unit. The AO has adopted an alternative method i.e. estimating the method of Baddi unit @ 12% for the purpose of making the addition. In this method, the AO did not take into account the factor of excise duty of Rs. 7,12,73,558/- which is a major factor of rejection of profit in respect of Panchkula unit whereas the Baddi unit is exempt from excise duty. In my view, it is proper to reallocate the expenses on sales ratio and the addition on account of Rs. 142.24 lacs would be made in respect of Panchkula unit and to that extent the profit of Baddi unit would get reduced.

43. Without prejudice to the above, even if we believe that the addition should be made u/s 69C, then the profit of Panchkula unit should be worked out after excluding the excise duty. The profit rate, thus worked out in respect of Panchkula unit, should be applied in respect of Baddi unit.

44. It is also illogical that Baddi unit is having sales of Rs. 15.47 crores whereas addition made by the AO by after disallowing claim u/s 80IC and also by applying section 69C comes to Rs.16.38 crores."

7. In our view, the order passed by the Id. CIT(A) in this behalf is quite reasonable. He is right in his observation that the NP rate in respect of Baddi unit was higher than Panchkula unit because the assessee had not properly allocated the expenses to Baddi unit. The Id. CIT(A) has properly allocated the expenses to both the units. Resultantly, the NP rate shown by the assessee in respect of Baddi unit has come down. Thus the very basis on which the impugned addition was made by the AO does not survive. Besides, the AO has not brought any material on record to establish that the assessee has incurred the impugned expenses so as to warrant addition u/s 69C. Addition u/s 69C can be made on the basis of reliable materials indicating incurrence of expenditure outside the books and not on the basis of assumptions as the AO has done in the present case. In this view of the matter, the order passed by the Id. CIT(A) deleting the impugned addition is confirmed. Appeal filed by the Department is dismissed.

8. As stated earlier, the assessee has withdrawn the memorandum of cross-objections. Therefore, the memorandum of cross-objections filed by the assessee is also dismissed

The appeal of the department was thus dismissed by the Tribunal.

2.11 The revenue assailed this order before Hon'ble Punjab & Haryana High Court wherein following two issues have been remitted back to Tribunal: -

2. *Weather on the facts and in the circumstances of the case, the Hon'ble ITAT was right in upholding the decision of Ld. CIT(A) vide which relief on account of disallowance u/s 80IC amounting to Rs.8,76,27,511/- was allowed?*

3. Weather the Hon'ble ITAT was right in law in accepting CIT(A)'s method of not apportioning part of expenditure relating to the financial costs of Rs.1,93,15,643/-, Depreciation of Rs.1,63,04,928/-, Capital Expenditure on R&D u/s 35(2) of Rs.3,00,67,328/- and deferred revenue expenses on scientific research u/s 35(2) of Rs.1,55,36,344/- to the Baddi unit for purposes of determining deduction u/s 80IC, when the assessee had not produced separate books of accounts for the two units in the course of assessment proceedings?

These questions, as per the directions, are to be decided afresh after considering the effect and operation of sub-section (4) of Sec. 80IC of the Act, 1961. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Our findings and Adjudication

3. We find that the provisions of clause (ii) of sub-section (4) of Sec.80-IC mandates that the undertaking or enterprises laying claim on deduction u/s 80-IC should not be formed by the transfer to a new business of machinery or plant previously used for any purpose. The explanation provides that the explanations 1 & 2 to sub-section (3) of Section 80IA would apply for the purposes of sub-clause (ii). The Explanation-2 to Sec. 80IA(3) provides that wherein in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of machinery or plant used in the business then the required condition would be deemed to have been complied with.

4. The first condition as contained in clause (i) of Sec.80-IC(4) mandate that the undertaking should not be formed by splitting up or reconstruction of an existing business. The fulfillment of this clause by the assessee is not

in major dispute. Even otherwise, it could be seen that the assessee has duly filed list of major plant and machinery installed at Baddi unit. The photographs of building at the time of inauguration were also furnished. The assessee furnished depreciation chart of Baddi unit evidencing installation of Plant & Machinery at Baddi unit during this year. A certificate form contractor was also furnished which mentioned that the building was completed on 08-10-2005. The assessee also furnished bills of payments of its contractors. The Ld. CIT(A) rendered findings that the assessee reflected investment of more than Rs.12.85 Crores in Baddi unit out of which Rs.3.93 Crores was spent on construction of the building. The construction of the building was completed before 14-10-2005 and the commercial production was commenced on 24-10-2005. Therefore, Ld. AO was not justified in arriving at the conclusion that no manufacturing could be done if the assessee could not produce bills of paintings. The perusal of photographs revealed that there was huge construction offactory building. Therefore, there was sufficient material to prove that the units commenced production form October, 2005 onwards. All these facts could not be controverted before us also. Considering all these facts, it is to be concluded that the condition of sub-clause (i) of sub-section (4) to Sec.80-IC stood amply satisfied by the assessee and there could be no reason to deny the impugned deduction on this score.

5. So far as the maintenance of separate books of account is concerned, from the orders of lower authorities, it could be seen that separate books of accounts along with supporting bills and vouchers were produced by the assessee which were examined in the presence of Ld. AO. The ledger

relating to Baddi unit was impounded and lying in the custody of Ld. AO. At many places, Ld. AO discussed about transfer entry from one unit to the other which prove the fact that separate books were maintained for both the units. Separate books were furnished by the assessee before Ld. CIT(A) on 30-03-2009 which was furnished to Ld. CIT(A) also who examined the same in the presence of Ld. AO. No major discrepancy was pointed out by Ld. AO in the same. Therefore, the allegation of Ld. AO that the assessee did not maintain separate books of accounts is bereft of any substance.

6. Proceeding further, so far as the allegation of transfer of old machinery from Panchkula unit to Baddi unit is concerned, it could be seen that the assessee, inter-alia, furnished complete list of R&D Equipments installed at Baddi unit and copy of fixed asset transfer voucher no. J-24 dated 30-01-2006 showing transfer of equipment to Baddi unit. It was a new machinery purchased by the assessee. The copy of vendor's invoice mentioned place of delivery as 'Baddi'. The assessee furnished copy of all transport bills bearing address of Baddi unit only. The ledger account of Head office and Baddi was also furnished to support the transfer of equipment from one unit to the other. The transaction was duly supported by the bank statement of the assessee as well as the confirmation of assessee's suppliers. By furnishing all these documents, the assessee, in our considered opinion, amply discharged the onus of proving that the equipment was a new equipment which was purchased for Baddi unit only. The transaction was genuine in nature and the condition as alleged by Ld. AO to be breached by the assessee, was in fact, fulfilled by the assessee. All the documentary evidences in the form of purchase invoices, bills of

entry, transport GRs, delivery challans, installation records, vendor's confirmation and bank statement would establish that the machinery was directly delivered at Baddi unit and installed there. The unit started commercial production from 24-10-2005 and the first transaction towards purchase of R&D equipment was undertaken on 01-11-2005 and such purchases continued till 30-01-2006 reflecting a continuous and phased procurement of machinery for the establishment and progressive stabilization of the Baddi unit. The copies of all these documents have been placed on record before us also. All these facts duly support the case of the assessee and the allegation of Ld. AO qua transfer of old machinery to the Baddi unit could not be accepted. Therefore, we would hold that the condition of sub-clause (ii) was also met by the assessee. In effect, the assessee fulfilled the eligibility condition to lay claim on impugned deduction u/s 80-IC. Accordingly, question no. 2 as remanded to us by Hon'ble Court, stand adjudicated in assessee's favor.

7. Coming to the quantum of deduction, as per the directions of Hon'ble Court, the correct method of allocation of following common costs is to be ascertained by us: -

Particulars	Total
Financial Costs	1,93,15,643/-
Depreciation	1,63,04,928/-
Capital expenditure on R&D u/s 35(2)	300,67,328/-
Deferred revenue expenditure on R&D u/s 35(2)	155,36,344/-

From the adjudication of Ld. CIT (as extracted by us in preceding para 2.10), it could be seen that the last two items viz. capital expenditure on R&D for Rs.300.67 Lacs and Deferred Revenue Expenditure on R&D for

Rs.155.36 Lacs as already been allocated in sales ratio and the profit of Baddi unit has already been reduced by Rs.142.24 Lacs which has attained finality. So far as the claim of depreciation is concerned, the same is to be allocated on the basis of fixed asset used in each unit. The assessee has duly maintained unit wise details of fixed asset and claimed depreciation as per assets installed at respective units. These expenses have correctly been allocated on the basis of fixed assets as used in each unit and could not be allocated in sales ratio. The last item viz. financial expenditure for Rs.193.15 Lacs has been allocated by the assessee as per funds utilized by respective units. The assessee has maintained unit-wise Balance Sheet and schedules which show identification of loans, interest and bank charges. Prior to commencement of Baddi unit, working capital has been utilized by Panchkula unit only. After 24-10-2005, interest on working capital has been allocated on average stock basis between the two units. In view of unit-wise audit disclosures, identification of loans and asset additions, it is evident that financial expenses have been properly and correctly apportioned on a unit-wise basis. This methodology finds our concurrence. The question No.3 as posed to us is accordingly adjudicated in assessee's favor and we hold that no further adjustment is required qua quantum of deduction u/s 80-IC by reallocating these four items. Both the grounds as raised by the revenue stand dismissed.

Conclusion

8. The appeal of the revenue stand dismissed.

Order pronounced on 09th March, 2026.

-Sd-
(RAJPAL YADAV)
VICE PRESIDENT

-Sd-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 09.03.2026

आदेश की प्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH