

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

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 6681/Del/2013  
AY: 2009-10**

Samtel Color Ltd. vs. ACIT, Circle 7(1)  
501, Copia Corporate Suites New Delhi  
District Centre, Jasola  
New Delhi 110 025

PAN: AAACS 6589 D

**A N D**

**ITA No. 6600/Del/2013  
AY: 2009-10**

Dy.CIT, Circle 7(1) vs. Samtel Color Ltd.  
New Delhi New Delhi

**(Appellant)**

**(Respondent)**

**Assessee by** : Shri D.C.Garg, C.A.

**Department by** : Sh.T.James Singson, Sr.D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

These are Cross Appeals and are directed against the order of the Ld.CIT(Appeals)-X, New Delhi dated 7.10.2013 pertaining to the Assessment Year (A.Y.) 2009-10

**2. Facts in brief**:- The assessee is a company and is engaged in the manufacturing and sales of colour picture tubes for colour television, colour gun/heater and cathodes for colour gun and deflection yoke for

colour picture tubes in different sizes. It filed its return of income on 29.9.2009 declaring loss of Rs.1,40,71,94,231/-. The Assessing Officer (hereinafter referred to as the AO) passed an assessment order u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 17.12.2011 computing the loss at Rs.1,38,31,10,730/- inter alia making certain additions and disallowances. On appeal the First Appellate Authority granted part relief. Aggrieved by this order of the Ld.CIT(A) both the assessee as well as the Revenue are in appeal before us.

**3.** We have heard Shri T.James Singson, Ld.Sr.D.R. on behalf of the Revenue and Shri D.C.Garg, the Ld.Counsel for the assessee.

**4.** On a careful consideration of the facts and circumstances of the case, orders of lower authorities and case laws cited, we hold as follows.

**5.** We first take up Revenue's appeal ITA 6600/Del/13. Revenue's ground of appeal reads as follows.

*"On the facts and in the circumstances of the case the Ld.CIT(A) erred in law and on facts in deleting the addition of Rs.1,03,03,481/- made by the A.O. on account of depreciation on deflection Yoke Division."*

**5.1.** This issue is covered in favour of the assessee and against the Revenue by the decision of the 'G' Bench of the ITAT in the assessee's own case for the A.Y. 2008-09 in ITA 3925/Del/2013. The Tribunal observed that the ITAT for the A.Y. 2007-08 vide ITA 3734/Del/2010 had followed the decisions of the Coordinate Bench in the assessee's own case for the earlier years and allowed the ground of the assessee.

**5.2.** Consistent with the view therein we uphold the order of the Ld.CIT(A) and dismiss the appeal of the Revenue.

**6.** Now we take up assessee's appeal in ITA 6681/Del/13 which is on the following grounds.

*"1. That the Ld.CIT(A)-X, New Delhi, has erred in law as well as on facts and in circumstances of the case in upholding the disallowance of Rs.14,99,757/- made by the A.O. without appreciating the facts of the case.*

*2. That the Ld.CIT(A)-X, New Delhi, has erred in law as well as on facts and in circumstances of the case in confirming the action of the A.O. in disallowing provision for obsolete inventory amounting to Rs.64,63,345/- without considering the facts and by disregarding verdict of the Jurisdictional High Court.*

*3. That the Ld.CIT(A)-X, New Delhi, has erred in law as well as on facts and in circumstances of the case in upholding the disallowance of Rs.16,50,495/- made by the A.O. u/s 14A of the Act.*

*4. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing."*

**7.** After hearing rival contentions, we hold as follows.

**8.** The disallowance in question in ground no.1 is (a) gifts and presents to employees on their fairwell Rs.1,22,848/-, education subsidy to kids of employees Rs.46,668/- and gifts and presents to customers Rs. 13,30,241/- . The disallowance was made on the ground that the assessee has not furnished any justification for the same. In our view, these expenses are perfectly justified and are genuine business expenditure. The A.O. as well as the Ld.CIT(A) have not doubted the genuineness of the expenditure. They have only raised question on the justification of incurring of these expenses. It is well settled that the A.O. cannot sit in the arm's chair of the business man and decide whether incurring of a particular expenditure is required or not. The Ld.CIT(A), without any basis has raised a presumption that the expenditure may be personal in nature. We do not see as to how an expenditure incurred by the company can be termed as personal in nature. Be it as it may, no disallowance was made on similar expenses incurred by the assessee in the earlier years. Hence we hold that the disallowance is

bad in law. Thus we set aside the order of the Ld.CIT(A) and allow ground no.1 of the assessee.

**9.** Ground no.2 is against the confirmation by the Ld.CIT(A) of the disallowance made by the A.O. of provision for 'inventory'. This issue in our view is squarely covered in favour of the assessee by the decision of the Jurisdictional High Court in the case of CIT vs. HotLine Tele Tube & Components Ltd. (2008) 175 Taxman 286 where it has concluded as follows.

*"5. In the instant case we find that the principle for valuing stock at cost or realisable market price, whichever is lower is applicable. The assessee has demonstrated that the stock being obsolete did not move for over three years and also the fact that it could only be sold if at all as scrap. As a matter of fact, the assessee has done by making the provision for diminution in value of stock is to anticipate the loss in the value of stock. No substantial question of law arises for consideration.*

*Ref: CIT vs. Hindustan Zinc Ltd. (2007) 210 CTR (SC) 282."*

**9.1.** The disallowance was made by the A.O. on the ground that the liability had not really crystallised. The assessee filed details of the obsolete inventory as on 31.3.2009 at page 48 and 49 of the paper book. The Revenue does not dispute the fact that these inventory have become obsolete but had only disputes the year of allowability. Under the circumstances, we apply the decision of the Jurisdictional High Court in the case of Hot Line (supra) and allow this ground of the assessee.

**10.3.** Ground no.3 is against the disallowance made u/s 14A of the Act. The Ld.Counsel for the assessee submitted that (a) in the case of CIT, Faridabad vs. Lakhani Marketing Inc. (In ITA 970/2008) decided on 2.4.2014 the Hon'ble Punjab & Haryana High Court held that S.14A cannot be invoked

when no exempt income was earned. (b) Hon'ble Jurisdictional High Court in CIT vs. Holcim India P.Ltd. (9- CCH 081) has also endorsed this view of the Hon'ble Punjab & Haryana High Court in the case of Lakhani Marketing.(c ) In the case of Cheminvest Ltd. vs. CIT reported in 378 ITR 33, the Jurisdictional High Court stated that where there is no exempt income, S.14A does not have applicability.

**10.4.** Respectfully following the proposition of law laid down by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra), as the assessee has not earned any income which is not chargeable to tax, no disallowance can be made u/s 14A of the Act. Hence this ground is allowed.

**11.** Ground no.4 is general in nature.

**12.** In the result the appeal of the assessee is allowed.

**13.** In the result Revenue's appeal is dismissed and assessee's appeal is allowed.

Order pronounced in the Open Court on 20<sup>th</sup> May, 2016.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 20<sup>th</sup> May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar