205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:094285-DB

ITA-81-2012 (O&M)
Date of Decision: 25.07.2024

Commissioner of Income Tax-II, CHD …Appellant

Vs.

M/s Venus Remedies Ltd. …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. Vaibhav Gupta, Advocate for the appellant.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The case was admitted on 04.03.2014, for determination on following question of law:-

> 1) Whether 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) Whether 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.
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> 3) Whether 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 or 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.

2. Heard learned counsel for the revenue.

3. No one inspite of notice having been served has appeared on behalf of the respondents.

4. Learned counsel has invited attention to the provisions of Section 80IC of the Income Tax Act, 1961, to submit that the benefit under Section 80IC would not be available.

5. We find that as per Section 80IC sub-Section 4 of the Act, 1961, the necessary requirements for granting the said benefits are as under:-

> "xx xx xx
>
> (4) This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:-
>
> (i) it is not formed by splitting up, or the reconstruction, of a business already in existence :
>
> Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
>
> (ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.
>
> *Explanation*:- The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (ii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section."

6. Learned counsel has invited our attention to the order passed by the ITAT and we find that while there is reference to Section 80IC but the effect of sub-section 4 with reference to the facts relevant in the present case

has not been examined by the ITAT at all. On the other hand, the CIT (Appeals) has taken into consideration and the Assessing Officer had denied the said benefit solely on the ground that the respondent was unable to satisfy the pin conditions for grant of benefit under Section 80IC as above.

7. As regards question No.1 framed at the time of admission, we find that the reallocation the expenses on sales ratio could have been done and accordingly, question No.1 is answered in favour of the assesse. 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 sub-section 4 of 80IC of the Act, 1961. The appeal is accordingly allowed to the said extent.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

25.07.2024
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No