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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 732/2014

COMMISSIONER OF INCOME TAX-VI Appellant
Through: Mr. Rohit Madan, Senior Standing
counsel.

versus

WINGS PHARMACEUTICALS P. LTD. Respondent
Through: Mr. Ved Jain and Mr. Pranjali Srivastava,
Advocates.

WITH

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ITA 733/2014

COMMISSIONER OF INCOME TAX-VI Appellant
Through: Mr. Rohit Madan, Senior Standing
counsel.

versus

WINGS PHARMACEUTICALS P. LTD. Respondent
Through: Mr. Ved Jain and Mr. Pranjali Srivastava,
Advocates.

AND

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ITA 734/2014

COMMISSIONER OF INCOME TAX-VI Appellant
Through: Mr. Rohit Madan, Senior Standing



counsel.

versus

WINGS PHARMACEUTICALS P. LTD. Respondent
Through: Mr. Ved Jain and Mr. Pranjali Srivastava,
Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

11.08.2015

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1. These three appeals by the Revenue under Section 260 A of the Income Tax Act, 1961 ('Act') are directed against the common order dated 7th February 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 3287, 4072 and 4073/Del/2012 for the Assessment Years ('AYs') 2006-07, 2007-08 and 2008-09 respectively.

2. By the said impugned order, the ITAT dismissed the Revenue's appeal and upheld the corresponding orders of the Commissioner of Income Tax (Appeals) ['CIT (A)'] holding in favour of the Assessee. A search and seizure operation was carried out in the premises of the Respondent Assessee on 14th February 2008. In response to the notice issued to it under Section 153A of the Act, the Assessee filed a 'nil' income for AY 2008-09



which was revised on 27th September 2009. The Assessee also filed returns for AYs 2006-07 and 2007-08 declaring 'nil' income on 31st July 2009. The Assessing Officer ('AO') passed an assessment order under Section 143 (3) of the Act passing the return at an income of Rs.20,97,36,220 for AY 2006-07, Rs.23,71,67,270 for AY 2007-08 and Rs.19,65,73,700 for AY 2008-09.

3. The Respondent Assessee manufactures pharmaceutical products which includes allopathic and ayurvedic products. It was incorporated in the year 1987. It has inter alia 2 plants, a sales depot and two warehouses in the Udyog Nagar Industrial Area, Delhi and a third plant at Industrial Area in Baddi, District Solan, Himachal Pradesh.

4. The Assessee earlier had a production unit at D-6, Udyog Nagar Industrial Area near Rohtak Road. Upon the closure of the production facilities at the said unit it was converted into a warehouse. Subsequently, the Assessee set up an allopathic pharmaceutical product manufacturing unit at Baddi which came into production with effect from 3rd May 2005. Ayurvedic products continued to be manufactured at its unit H-18, Udyog Nagar. Since Baddi, District Solan, Himachal Pradesh fell in a tax holiday zone, the assessee claimed deduction under Section 80IC of the Act on its profit from the said



unit since AY 2006-07. The assessment order noted that in the search and survey action on the Assessee group conducted on 14th February 2008 it was found that the group had obtained large scale accommodation bill from M/s. Krishna Machines and Tools as well as M/s. Srikrishna Machines and Tools both belonging to one Dinesh Sharma of Ghaziabad.

5. It is stated that Dinesh Sharma had earlier been subjected to search and investigation by the Central Excise Department. He is stated to have admitted to having provided accommodation entries to various concerns through his three concerns. It was alleged that bogus bills had been raised by three concerns of Dinesh Sharma without supplying any material to the Assessee during Financial Year ('FY') 2005-06 and 2006-07. The statement made by Dinesh Sharma during the investigation by the income tax authorities was provided to the Assessee during the course of the remand proceedings. The bogus bills were in respect of new machinery for the purpose of installation at the Baddi unit. The allegation of the Department was that the bills were in respect of old machineries which were being used at D-6, Udyog Nagar which then had been shifted to Baddi. Statements of certain employees of the Assessee were also discussed in the assessment order. It was alleged that for the purpose of Section 80IC one of the



conditions required to be satisfied is that the ratio of new to old machinery has to be 80:20 in order to make an on the spot verification of the description and the age of machinery installed i.e. whether these were new machineries or old machineries including the cost of their acquisition.

6. As regards the denial of the claim under Section 80 IC of the Act, the CIT (A) called for a remand report from the AO and after considering the said report and the statements recorded during the course of search and survey operations agreed with the AO's findings that certain old machineries from D-6 Udyog Nagar had been passed off as being new machineries installed at Baddi by purchasing accommodation bills from various parties. However, the CIT (A) proceeded to examine whether the value of the old machinery was as such as to disentitle the Assessee of the benefit under Section 80 IC of the Act. The CIT (A) found that the valuation report of the Department contained factual inaccuracies. Further although the valuation report reflected that the valuer had taken the quotation/verbal confirmation from the supplier, such quotation had not been made part of the report. Further the report took into account the cost of new machinery as on the date of valuation and applied an index rate of return as on 31st March 2005 to work out the discounted value. Further inspection was carried out by one Umesh



Johar who is not an approved valuer. For all of the aforementioned reasons, the CIT (A) rejected the report of the Department's valuer. After examining the entire facts including affidavits of the suppliers of the machineries and considering all the documents on record, the CIT (A) concluded that the valuation of the machineries as per the books for the AY 2006-07 was Rs.2,57,65,050 of which bills for Rs.53,23,540 were genuine and required to be excluded. The percentage of old machineries worked out to 9.09% which was less than 20% prescribed under explanation 2 to Section 80IC of the Act. Consequently, the Assessee was held entitled to the deduction. Similar findings have been rendered by the CIT (A) in respect of the other two AYs as well.

7. The ITAT has, in the impugned common order, again examined the documents on record as well as the statements recorded during the search and concurred with the analysis and conclusion of the CIT (A).

8. The Court finds that both the opinions of the CIT (A) as well as the ITAT have turned essentially on an appreciation of the evidence. Although the ITAT also upheld the decision of the CIT (A) that some of the old plant and machinery has been shifted from the Delhi unit to the Baddi unit, the ratio of



the new to old machinery was within the acceptable range of 80:20. Since the findings have purely turned on facts and the findings have not been shown to be perverse, the Court does not find any substantial question of law arising as regards the said issue.

9. As regards the issues of the Assessee allegedly obtaining accommodation bills of machineries and suppression of wages, additions on account of investment in plant and machinery and corresponding depreciation and recording the addition made by the AO on account of the income from D-6 Udyog Nagar unit of Delhi, the Court finds that both the CIT (A) and the ITAT have, after elaborately discussing the documents and facts, come to the conclusions in favour of the Assessee and against the Revenue. Here again the Court is unable to be persuaded to hold that the said findings have been vitiated by perversity. No substantial question of law arises.

10. The appeals are dismissed.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

S. MURALIDHAR, J

A handwritten signature in black ink, appearing to be 'Vibhu Bakhru'.

VIBHU BAKHRU, J

AUGUST 11, 2015/dn