

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

**BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)
AND SHRI N.K. BILLIAYA (A.M.)**

ITA No. 3565/MUM/2008

Assessment Year : 2004-05

General Foods Limited, 51, Broach Street, Ist floor, Kapadia Chambers, Mumbai. PAN : AAACG5677J	Vs.	Asstt. Commissioner of Income Tax- Central Circle 40, Mumbai.
(Appellant)		(Respondent)

ITA No. 3796/MUM/2008

Assessment Year : 2004-05

Asstt. Commissioner of Income Tax- Central Circle 40, Mumbai.	Vs.	General Foods Limited, 51, Broach Street, Ist floor, Kapadia Chambers, Mumbai. PAN : AAACG5677J
(Appellant)		(Respondent)

Assessee by : Shri Deepak Nagor

Revenue by : Shri Pavan Ved

Date of hearing 14-5-2012

Date of pronouncement 23-5-2012

ORDER

PER DINESH KUMAR AGARWAL, J.M.

These cross appeals by the assessee and the Revenue are directed against the order dated 31-3-2008 passed by the Id. CIT (A) – Central VII,

Mumbai for the A.Y. 2004-05. Both these appeals are disposed of by this common order for the sake of convenience.

2. Briefly stated facts of the case are that the assessee company is engaged in the business of manufacturing of Soya Oil. In the case of Ruchi Soya Group, a search and seizure action u/s 132(1) of the Income Tax Act 1961 (the Act) was carried out by the department on 17.11.2005 at their various premises located at Mumbai and Indore. The assessee company is a member of Ruchi Soya Group and was covered under the search action u/s 132(1) of the Act. In response to notice issued u/s 153A of the Act, the assessee filed return declaring total income of Rs. 5,16,64,918/- as against original return filed declaring total income of Rs. 4,91,64,918/-. The difference of Rs. 25 lacs in the return filed u/s 153A is the declaration made by the assessee during the course of search. However, the assessment was completed after making disallowance u/s 10A of the Act Rs. 65,14,829/- and disallowance u/s 14A Rs. 9,827/- on a total income of Rs., 5,81,89,574/- vide order dtd. 24-12-2007 passed u/s 153A r.w.s. 143(3) of the Act. On appeal, the ld. CIT(A) partly allowed the appeal.

3. Being aggrieved by the order of the ld. CIT(A), the assessee and the Revenue both are in appeal before us.

ITA No. 3565/Mum/2008 (assessee's appeal)

4. All the grounds taken by the assessee are against the sustenance of disallowance of deduction u/s 10A of the Act amounting to Rs. 6514829/-.

5. Briefly stated facts of the above issue are that during the course of assessment proceedings, the A.O. noted that the assessee has claimed deduction u/s 10A of the Act amounting to Rs. 6514829/- for manufacturing and making exports from SEZ Kandla supported by a report in Form No. 56F submitted along with the return. On making necessary verification it was, inter alia, observed by the A.O. that the assessee claimed that it is converting Soyabean Meal to Soyabean Meal Super Grade and claiming deduction u/s 10A of the Act. However, on perusal of the P&L account, the A.O. observed that no activity is undertaken, it is only purchases which are exported under the garb of SEZ Kandla and accordingly he held that no manufacturing activity has been carried out and thus the assessee company is not eligible for deduction u/s 10A of the Act.

6. On appeal, the Id. CIT(A) observed that the appellant has failed to rebut the observations and the findings of the A.O. whatsoever, it is not disputed that no manufacturing activities were undertaken by the appellant which is the pre-requisite for claiming such deduction, manual or processing through machine did not result into a new product though it might have improved the quality of the goods and after relying on

certain decisions cited at page 6 of his order, upheld the disallowance made by the A.O.

7. At the time of hearing, the assessee's representative filed written submission inter alia stated as under:-

“3. Newly introduced sub-section 10A(1A) allowed deduction of 100% of profits and gains derived by an undertaking from export of articles or things which the undertaking begins to manufacture or produce during the previous year commencing on or after 1.4.2003 in any SEZ.

4. During the previous year relevant to assessment year 2004-05, the assessee set up a unit in Kandla SEZ and made exports therefrom. Necessary documents in support were submitted. Agreement (as envisaged in para 8 of the SEZ Scheme) between the assessee and the Govt. for setting up the SEZ Unit for manufacture of edible soya products (customized) appears at page 16-18 of the Paper Book. Copy of Green Card valid upto 28.2.2009 issued by Development Commissioner KSEZ is at page 15 of PB.

5. The assessee purchased the raw material, i.e. yellow Soyabean Meal Extraction at Kandla and thereafter the materials were transferred to SEZ shed of the, unit. Being agro based products, certain manufacturing process were carried out so as to convert it in different grades of product meant for export. The material purchased was tested for its quality parameters including moisture content, impurities, protein content etc. The processing involved cleaning, grading and blending which converted the raw material into finished product of uniform, consistent and desired product quality for export. It was done in assessee's SEZ unit. It was got done on job work basis from Rishi Shipping, another SEZ unit also for which approval from development Commissioner was taken.

6. It will be seen from MOU entered into between the assessee and Rishi Shipping (copy at pages 19-20 of PB) that Soyabean Deoiled Cake (Soyabean Extraction) which is the raw material was processed in the plant and Soyabean Meal (Super Grade) was produced.

6.1. The finished good is complete new product having a distinct name and is used for high protein isolate and concentrate. Therefore, the AO/CIT(A) erred in holding that no manufacturing activity was carried out.”

Reliance was also placed on following decisions:-

1. CIT v. Budharaja (N.C.) and Co. 204 ITR 412 (SC),
2. Aspinwall and Co. Ltd. v. CIT 251 ITR 323 (SC),
3. CIT vs. Sesa Goa Ltd. 271 ITR 331 (SC),
4. PRP Granites v. ACIT (2009) 221 CTR (Mad) 371,
5. Vijay Ship Breaking Corpn. V. CIT 219 CTR (SC) 639 (SC),
6. ACIT v. Mukherjee & Co. (P) Ltd. 113 ITR 718 (Cal),
7. CIT v. Rajmohan Cashews (P.) Ltd. 185 ITR 472 (Ker),
8. CIT v. Talwar Khullar (P) Ltd. 235 ITR 70 (All),
9. Chillies Exports House Ltd. v. CIT 225 ITR 814 (SC),
10. CIT v. Gaekwar Foam & Rubber Co. Ltd. 35 ITR 662 (Bom), and
11. Capsulation Services P. Ltd. v. CIT 91 ITR 566 (Bom).

8. On the other hand, the ld. D.R. supports the order of the A.O. and the ld. CIT(A).

9. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the claim of the assessee that it is engaged in the business of manufacturing i.e. converting Soyabean Meal to Soyabean Meal Super Grade which according to the assessee a distinct commodity from the raw material. It was further claimed that during the previous year relevant to the assessment year 2004-05 the assessee has set up a unit in Kandla SEZ and made exports and also claimed deduction u/s 10A of the Act. However, we find that the claim of the assessee has not been examined either by the A.O. or by the ld. CIT(A) despite the fact that the assessee,

before the Id. CIT(A), has filed its written submissions appearing at page 3 to 5 of the order of the Id. CIT(A). The Id. CIT(A) without giving any cogent reason that the assessee is not engaged in the manufacturing activity has rejected the claim of the assessee by holding that it is not disputed that no manufacturing activities were undertaken by the appellant which is a prime pre-requisite for claiming deduction. It is not the case of the Revenue that the assessee is not converting Soyabean Meal to Soyabean Meal Super Grade or the said conversion does not amount to manufacturing activity. This being so, we are of the view that the issue has not been examined properly and hence, in the interest of justice, we consider it fair and reasonable that the matter should go back to the file of the A.O. and accordingly we set aside the order passed by the Revenue Authorities on this account and send back the matter to the file of the A.O. to decide the same afresh in the light of our above observations and according to law after providing reasonable opportunity of being heard to the assessee. The grounds taken by the assessee are, therefore, partly allowed for statistical purpose.

ITA 3796/Mum/2008 (By Revenue)

10. Grounds of appeal No. 1 & 2 taken by the Revenue read as under:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing benefit of telescoping of Rs.25,00,000/- while upholding the A.O.’s action of disallowance of assessee’s claim of deduction u/s.10A of the I.T. Act, 1961 at Rs.40,24,656/-.

2. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.”

11. Brief facts of the above issue are that while filing the return, the assessee disclosed an additional income of Rs. 25 lakhs and offered for tax on adhoc basis so as to cover up any discrepancies and disallowances out of expenditure debited to P&L account. However, the A.O. except mentioning that the assessee has filed revised return declaring extra income of Rs. 25 lakhs did not discuss this issue in the assessment order. Before the ld. CIT(A) the assessee, inter alia, stated that without prejudice to the legality of deduction claimed u/s 10A of the Act, the disallowance u/s 10A may be restricted to Rs. 40,24,656/- only instead of Rs. 64,24,656/-. The ld. CIT(A) after considering the assessee's letter and the submissions, held that the appellant is entitled to telescoping of Rs. 25 lakhs disclosed as additional income from the income determined by the A.O. after disallowing the claim u/s 10A and directed the A.O. to give credit thereof and re-determine the assessed income and hence allowed the claim of the assessee.

12. At the time of hearing, the ld. D.R. supports the order of the A.O. However, he did not dispute that now the issue stands covered in favour of the assessee by the decision of the Tribunal in the case of M/s National Steel & Agro Industries Ltd. ACIT and vice versa in ITA Nos. 4558 to 4561/Mum/2008 for A.Ys. 2000-01 to 2003-04 & ITA No. 4476 to 4478/Mum/2008 for A.Ys. 2001-02 to 2003-04 dtd. 12.3.2010.

13. On the other hand, the ld. Counsel for the assessee submits that the issue stands covered in favour of the assessee by the decision of the Tribunal in M/s National Steel & Agro Industries Ltd. (supra).

14. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that the facts are not in dispute inasmuch as it is also not in dispute that the assessee while filing the return of income in response to the notice u/s 153A declared an additional income of Rs. 25 lakhs and, in alternative, claimed that the disallowance, if any, u/s 10A may be restricted to Rs. 40,24,656/- only instead of Rs. 64,24,656/-. The ld. CIT(A) after examining the issue held that the assessee is entitled to telescoping of Rs. 25 lakhs disclosed as additional income from the income determined by the A.O.

15. In M/s National Steel & Agro Industries Ltd. (supra) it has been held as under (para 12):-

“Coming to the issue of telescoping which is ground No. 2 for assessment year 2001-02 and ground No. 3 for assessment year 2002-03 and ground No. 1 for assessment year 2003-04, in the light of our discussion and the legal position while considering ground No. 2 in the assessee’s appeal, we fully agree with the findings of the CIT (Appeals) and hold that there is no error whatsoever in the direction of the CIT (Appeals) to the A.O. to grant the benefit of telescoping. When the assessee has declared additional income, obviously the same is available for explaining either expenditure or for explaining the investments made during that year. These grounds raised in the Revenue’s appeals are dismissed.”

In absence of any distinguishing feature brought on record by the Revenue, we respectfully following the order of the Tribunal (supra) in the group case of the assessee, decline to interfere with the order passed by the Id. CIT(A) on this account and accordingly the grounds raised by the Revenue are rejected.

16. In the result, assessee's appeal stands partly allowed for statistical purpose and Revenue's appeal is dismissed.

Order pronounced on this 23rd day of May, 2012.

Sd/-
(N.K. BILLIAYA)
ACCOUNTANT MEMBER

Sd/-
(DINESH KUMAR AGARWAL)
JUDICIAL MEMBER

Mumbai, Dated 23rd May, 2012.

RK

Copy to:

1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- Central VII, Mumbai
4. Commissioner of Income Tax -Central- 4, Mumbai
5. Departmental Representative, Bench 'G', Mumbai

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BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI