

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6121/Del/2019
(Assessment Year : 2015-16)

ITA No.6122/Del/2019
(Assessment Year : 2016-17)

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| DCIT, Central Circle-4, New Delhi | Vs. | M/s. Hyderabad Distilleries and Wineries Pvt. Ltd. 4 th Floor, Bhandari House, 91, Nehru Place, New Delhi PAN : AAACH2679B |
| (APPELLANT) | | (RESPONDENT) |

ITA No.1289/Del/2022
(Assessment Year : 2017-18)

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| ACIT, Central Circle-10(1), New Delhi | Vs. | M/s. Hyderabad Distilleries and Wineries Pvt. Ltd. 4 th Floor, Bhandari House, 91, Nehru Place, New Delhi PAN : AAACH2679B |
| (APPELLANT) | | (RESPONDENT) |

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|-------------|--------------------------|
| Assessee by | Sh. M.K.Madaan, CA |
| Revenue by | Sh. Javed Akhtar, CIT-DR |

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| Date of hearing: | 25.05.2023 |
| Date of Pronouncement: | 14.06.2023 |

ORDER**PER ANUBHAV SHARMA, JM:**

The appeals have been preferred by Revenue against the appellate order dated 10.04.2019 & 29.01.2021 in appeal no. 80/2018-19 and 290/2018-19 and 23/10191/2019-20 for assessment year 2015-16, 2016-17 & 2017-18 respectively passed by the Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 22.12.2018 & 6.11.2017 u/s 143(3) of I.T. Act, 1961 (hereinafter referred to as 'the Act') passed by ACIT/ DCIT, Central Circle-04, New Delhi (hereinafter referred as Ld. Assessing officer or in short 'Ld. AO').

2. The facts in brief are that the Appellant is engaged in the manufacturing of Indian Made Foreign Liquor (IMFL) since 1977. The appellant company was having license to manufacture 69.98 lakhs Proof Litres(also referred to as "PLs", for brevity) IMFL in the State of Andhra Pradesh. The appellant company is having its own Factory Building, Plant and Machinery, Technical lab, Managerial staff and skilled workers to carry on IMFL manufacturing activities. However, the appellant did not own any popular brand of IMFL. Therefore, it is manufacturing its own products using "Brands" owned by M/s Jagatjit Industries Limited against payment of royalty. The appellant company is using licensed capacity of 1.38 lacs PLs for the manufacturing of its own products supplied to Canteen Store department. The appellant company sub-leased part of its licensed capacity to the extent of 68.60 lacs PLs along with part of manufacturing unit to M/s

Jagatjit Industries Limited. It was also rendering manufacturing services on contract basis to M/s Jagatjit Industries Limited for the maximum use of its core competence as an IMFL manufacturer. In the absence of its own saleable brands and to continue its manufacturing business, the appellant company decided to enter into a sub-licensing agreement with M/s JIL. It is specifically claimed that that prior to A-Y. 2008-09, Assessee was in contract manufacturing with JIL and if Andhra Pradesh Distilleries Rules were amended that contract manufacturing was possible only through subleasing of Licensed capacity. It is claimed by assessee that it continued to be in control and possession of its IMFL manufacturing plant. The company continued to have Power connection for Industrial use. The appellant company also continued to have registration under VAT, service tax etc. for the year under appeal. The appellant company continued to have water supply connection for industrial use in its name. The appellant company continued to have all its workers required for carrying out various activities of manufacturing IMFL. The appellant company paid franchise license fee and got registered IMFL brands with excise department to manufacture its own IMFL products paying royalty to JIL.

3. Ld. AO considered the lease rent and packaging charges derived under agreements with JIL to be income from other sources and not business income of the appellant. Further on aforesaid consideration of income from lease and packaging, certain expenses were disallowed on proportionate basis. Ld. CIT(A) has deleted the additions so the Revenue is in appeal before this Tribunal.

4. Heard and Perused the record. Ld. AR for the appellant submitted as chart claiming all the issues are covered in favour of assessee by order of

Tribunal in assessee's own case for AY2008-09 vide order dated 12/7/2018 in ITA No. 740/DEL/2012. Ld. DR was unable to cite any distinguishing facts. Bench has given a wholesome look to the issues and order for AY 2008-09.

5. It can be appreciated that in appeals of Revenue for AY 2015-16 and 2016-17, the grounds as raised in themselves show that as Ld. CIT(A) has followed the Tribunal's order of AY 2008-09 in assessee's case to delete the addition, the appeals are filed alleging error in following AY 2008-09 orders. The Bench is of considered opinion that judicial propriety required Ld. CIT(A) to follow the decision of Tribunal in assessee's own case if there was no distinguishing fact or otherwise the order of Tribunal was set aside by Hon'ble High Court or even if under challenge. The Revenue's appeals for AY 2010-11 stands dismissed vide order dated 23/11/22 in ITA No. 7474/DEL/2018 and for AY 2013-14 vide order dated 20/9/22 in ITA No. 50/DEL/2019. Thus the appeals for AY 2015-16 and 2016-17, deserve same fate.

6. As with regard to the appeal for AY 2017-18 it can be appreciated that in para 5.3.2 of the order the Ld.CIT(A) mentions that he is deleting the additions on the basis of orders in favour of assessee for previous AYs, where assessee has been given benefit by CIT(A) or Tribunal. Thus for this appeal also there is no substance left to be determined.

7. Thus respectfully following the decisions in favour of assessee by the Co-ordinate Benches for previous AYs, the **appeals of Revenue are dismissed.**

Order pronounced in the open court on 14th June, 2023.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Dated : 14 /06/2023

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,
ITAT, Delhi