

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. Nos. 2485 & 2486/KOL/2017
Assessment Years: 2012-2013 & 2013-2014**

***Deputy Commissioner of Income Tax,.....Appellant
Circle-10(1), Kolkata,
Aayakar Bhawan, 3rd Floor,
P-7, Chowringhee Square, Kolkata-700 069***

-Vs.-

***M/s. Goodcare Pharma Pvt. Limited,.....Respondent
1, Gupta Lane, Kolkata-700 006
[PAN: AAACG 9260 B]***

Appearances by:

*Shri Saurabh Kumar, Addl. CIT (D.R.), for the Appellant
Shri S.M. Surana, Advocate, for the Respondent*

Date of concluding the hearing : January 22, 2019
Date of pronouncing the order : April 05, 2019

O R D E R

Per Shri P.M. Jagtap, Vice-President (Kolkata Zone):-

These two appeals are preferred by the Revenue against the common order passed by the Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 27.09.2017 for A.Ys. 2012-13 and 2013-14 and since some of the issues raised therein are common, the same have been heard together and are being disposed of by a single consolidated order.

2. First we take up the appeal of the Revenue for A.Y. 2012-13 being **ITA No. 2485/KOL/2017**. The relevant facts of the case giving rise to this appeal are as follows:-

The assessee in the present case is a Company, which is engaged in the business of trading and manufacturing of Ayurvedic Medicine. The return of income for the year under consideration was originally filed by the assessee on 13.09.2012 declaring total income of Rs.1,33,52,899/-. Subsequently a revised return was filed by the assessee on 07.10.2013 declaring total income of Rs.1,32,36,575/-. In the assessment originally completed under section 143(3) vide an order dated 22.09.2014, the total income of the assessee was determined by the Assessing Officer at Rs.2,40,51,000/- after making addition, inter alia, on account of disallowance of assessee's claim for deduction under section 80IC to the extent of Rs.1,04,78,226/-. The said assessment was subsequently set aside by the concerned Id. Principal CIT vide an order dated 02.02.2016 passed under section 263 with a direction to the Assessing Officer to make the assessment afresh on certain issues specifically raised by him.

3. One of the issues raised by the Id. Principal CIT in the order under section 263 was relating to the sales of Rs.7,16,01,719/- made by the assessee to its group concern M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited at the rate ranging between 45 to 50% of the M.R.P. Since the said sales to the extent of Rs.4.89 crores were made by the assessee out of the production of Baidyanath Unit, the profit of which was exempt under section 80IA, it was observed by the Id. Principal CIT in the order under section 263 that the failure of the assessee to take the market value of sales attracted the provisions of section 80IA(8) of the Act. When this issue was raised by the Assessing Officer during the course of the fresh assessment proceedings initiated in pursuance of the order of the Id. Principal CIT passed under section 263, it was explained by the assessee that its Dehradun Unit was manufacturing the patented Ayurvedic medicines of M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited and since Shree Baidyanath Ayurved Bhawan Pvt. Limited was ultimately selling its patented products to the ultimate customers through sequential chain of intermediaries involved in the distribution

chain, there was a difference in the price charged by the assessee and the MRP of the products to take care of the profits of the said intermediaries involved at every stage. This explanation of the assessee was not found acceptable by the Assessing Officer. According to him, there was no valid reason for the assessee-company to sell its products at only 45% to 50% of the MRP to the sister concern M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited and treating this as undervaluation of its sales by the assessee by 50%, he made an addition of Rs.7,16,01,719/- to the total income of the assessee by invoking the provisions of section 80IA(8).

4. Another point that was raised by the Id. Principal CIT in the order under section 263 was relating to the advertisement expenditure of Rs.59,18,098/- incurred by the assessee and claimed as expenditure entirely against the profit of the Kolkata Unit, which was chargeable to tax. As noted by the Id. Principal CIT, the total sales of the assessee-company to third parties was only about Rs.80 lakhs and the expenditure incurred on advertisement against the said sales was very high. It was alleged that the expenditure relating to advertisement of different production of the Group was debited by the assessee-company in the non-exempted Unit. In this regard, it was submitted on behalf of the assessee before the Assessing Officer that the advertisement expenditure was not required to be incurred for effecting sales to group companies and it was incurred for these products which were manufactured in Kolkata Unit for enhancing the sales of the assessee-company through its own dealers. The Assessing Officer did not find merit in these submissions made on behalf of the assessee-Company. According to him, there was a deviation from the matching principle in respect of Unit to Unit for setting off advertisement expenditure. He held that the assessee-company by not claiming any advertisement expenditure in Dehradun Unit had inflated its profit for claiming higher deduction under section 80IC. He also noted that the profit booked by the assessee-company in Dehradun Unit at 45.18% was not in conformity with the net profit derived by other

manufacturing units of the assessee-company at Kolkata and Gurgaon, which were not eligible for deduction under section 80IC. Since the sales of the said Units was only 10% of the total sales, the Assessing Officer restricted the deduction claimed by the assessee on account of total advertisement expenditure of Rs.59,18,098/- to 10% and disallowed the balance expenditure of Rs.53,26,288/-. In the assessment completed under section 143(3)/263 of the Act vide an order dated 17.12.2016, two additions of Rs.7,16,01,719/- and Rs.53,26,288/- thus were made by the Assessing Officer to the total income of the assessee of Rs.2,40,51,000/- as assessed in the assessment originally completed under section 143(3) and the total income of the assessee was accordingly determined by him at Rs.10,09,79,000/-.

5. Against the order passed by the Assessing Officer under section 143(3)/263, an appeal was preferred by the assessee before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), the issue relating to the disallowance of Rs.1,04,78,226/- as made by the Assessing Officer on account of its claim for deduction under section 80IC in the assessment originally completed under section 143(3) was also raised by the assessee. The Id. CIT(Appeals) entertained the said claim and decided this issue in favour of the assessee for the following reasons given in his impugned order:-

"7. I have gone through the assessment order and the written submissions filed by the assessee. I find that the AO has adopted the figures of total income as per the original assessment order but has not discussed the issue with regard to part disallowability of part of the claim of deduction u/s 80IC which was discussed by the AO in the original assessment order. Since however, the AO has taken the figures of original assessment while starting the computation, the grievance of the assessee in ground no 1 remains to be addressed with regard to the disallowance of part of the claim for deduction ss] s B0IC in the original assessment order.

7.1. I find that the assessee have been claiming deduction u/s 80IC on the profit from its Dehradun unit since assessment year 2009-10. The sales of Dehradun Unit during the year was made to Sree Baidyanath Ayurved Bhawan P Ltd.. The profit in

Dehradun Unit during the year was 45.18% as against profit of 23.78% in Joka Unit. The AO viewed that Sree Baidyanath Ayurved Bhawan P Ltd., was owned and controlled by the same Sharma family, relatives and associates. This prompted the AO to make enquiry as to the reasonableness of the profit at Dehradun Unit. The AO called for the explanation with regard to the higher profit at Dehradun Unit as well with regard to the advertisement expenses booked in Joka Unit alone. I find that the assessee filed explanation on 4.8.2014. It was explained that the advertisement expenses incurred by the assessee at Joka Unit were for its own branded goods which were sold to outside parties. The details of such sales were filed. The AO vide his notice dated 18.8.2014 again asked for the explanation of the assessee with regard to the application of section 80I(10) and 80IC(7) and also proposed to disallow 90% of the advertisement expenses. The assessee by his letter dated 28.08.2014 explained that the advertisement expenses at Joka Unit was only for creating market for its own branded products. As regards the higher profit at Dehradun Unit the assessee filed its explanation on 4.8.2014 wherein it was stated that there were several factors because of which the profit at Dehradun Unit was higher. The assessee submitted that in Joka Unit, the selling and distribution expense were claimed because there was sales to outsiders whereas no such expenses were required in Dehradun Unit since the sale during this year was made by Sree Baidyanath Ayurved Bhawan P Ltd., only. It also explained that labour cost was higher at 8.57% in Calcutta being metropolitan city as against 4.52% in Dehradun. It was also explained vide letter dated 4.8.2014 that the assessee cannot be treated as relative or close associate of Sree Baidyanath Ayurved Bhawan P Ltd. The AO, in order to verify the transactions also issued notice u/s 133(6) on 18.8.2014 to Sree Baidyanath Ayurved Bhawan P Ltd., which was duly replied by them vide their letter on 12.9.2014 wherein, they confirmed that they did not incur any expenses of the assessee. The assessee also explained the cost of production at Dehradun Unit as well as the reasons for higher margin. The assessee explained that the materials purchased from the local market at Dehradun was cheaper since such material also enjoyed the benefit of tax exemptions like Central Excise, VAT, Sales tax, Subsidy etc at that place and hence the overhead costs were also lower resulting in higher profit at Dehradun Unit. The assessee also submitted that the profit at Dehradun Unit since its inception was higher than Joka Unit. I find that the AO has not controverted the explanation filed by the assessee. The AO has not brought on record any evidence to show that the cost of the materials purchased at Kolkata and Dehradun was same. The AO has also not controverted the submissions of the assessee that the labour cost at Kolkata was higher. The AO has also not brought on record any evidence to suggest that the advertisement expenses incurred were related to Sree Baidyanath Ayurved Bhawan P Ltd., or that same were related

to the sales made by the assessee from its Dehradun it, The assessee filed evidence before the AO to show that the assessee was selling its own produces under its own brand for which advertisement were made. I also find that deduction u/s 80IC was allowed to the assessee on same facts and circumstances in earlier years. Sales from Dehradun Unit was admittedly made to Sree Baidyanath Ayurved Bhawan P Ltd., in all earlier years and the ratio of profit at Dehradun Unit was always higher. I also find that in the initial assessment year 2009-10 proceedings u/s 263 were initiated by the CIT-Kol.-4 with regard to the allowability of the deduction u/s 80IC but the Ld CIT-Kol-4 held that on the facts and circumstances of the case the assessee was entitled to the deduction u/ s BOIC. I also find that the assessee vide is letter dated 4.8.2014 also explained the basis of price fixation of the goods sold to M/s Sree Baidyanath Ayurved Bhawan P. Ltd., the discount allowed to them, calculation of billing rates, comparative rate of raw materials and packing materials of Kolkata Unit and Dehradun Unit, details of sales of similar products by other Ayurvedic medicine manufacturers to justify the rate of sales to Sree Baidyanath Ayurved Bhawan P Ltd, I also find that the assessee duly explained that Sree Baidyanath Ayurved Bhawan P Ltd., is not a related party within the meaning of section 80I(10) or 80IC(7).

As against the explanation' and overwhelming evidences filed by the assessee, the AO has not brought on record any evidence to show that raw material cost or the labour cost of both the units was same and the explanation of the assessee was not acceptable. The AO has also not brought on record any evidence to suggest that the price charged from Sree Baidyanath Ayurved Bhawan P Ltd., was higher or lower than the market price of such goods even after the explanation and evidences filed by the assessee. The AO has also not distinguished the facts of the case as were prevailing in the earlier years to suggest that the principles of consistency are not applicable. The deduction is being allowed from the initial year itself. Considering the facts and circumstances of the case I am of the opinion that the AO was not justified in restricting the deduction u/s 80IC by estimating the profit @23.78% of the sales at Dehradun Unit. The AO is directed to allow deduction u/s 80IC as claimed".

6. In the appeal filed before the Id. CIT(Appeals), both the additions made by the Assessing Officer to its total income in the assessment completed under section 143(3)/263 of the Act were challenged by the assessee and after considering the submissions made by the assessee as

well as the material available on record, the Id. CIT(Appeals) deleted the said additions for the following reasons given in his impugned order:-

"The records show that the total sale of the assessee at Kolkata and Dehradun Unit was Rs.8,03,81,472/- out of which the sale to Sree Baidyanath Ayurved Bhawan P Ltd. was Rs.7,16,01,719/- from both the units. No deduction was claimed u/s 80IC in so far the sale from Kolkata Unit was concerned. Out of the total sale, the sale of the products of Dehradun Unit was for Rs.4,89,49,308/- to the said Sree Baidyanath Ayurved Bhawan P Ltd. The profit at Dehradun Unit was declared at Rs.2,21,18,372/- which was claimed as deduction u/s 80IC as in earlier years. The Ld. AO accepted that the assessee was eligible to the claim of deduction u/s 80IC in respect of profits from Dehradun Unit for the assessment year in question. The AO however restricted the deduction at 23.78% of the sales. In my decision vide para.6, I have considered the claim of the assessee and in my opinion the assessee was entitled to the claim as made in the return of income.

In the order u/s. 263, the Pr. CIT-4 found that the sale has been made by the assessee to Shri Baidyanath Ayurved Bhawan P Ltd. at 45% to 50% of market price. (MRP of Shri Baidyanath Ayurved Bhawan P Ltd.). The Pr CIT directed the AO to examine the sales price which should have been made. The AO noted that the total sale from both the units to Shri Baidyanath Ayurved Bhawan Pvt Ltd. was Rs.7,16,01,719/- The AO noted that the goods were sold to the said party at 45% to 50% discount of the MRP The AO has taken the MRP of Shri Baidyanath Ayurved Bhawan Pvt Ltd. as sales price and added back Rs.7,16,01,719/- as further profit which the assessee should have made. The AO in the original assessment considered that the assessee declared profit @ 45.18% of the sales price at the said unit which as per the AO was excessive. The AO restricted the profit @ 23.78% and accordingly disallowed Rs.1,04,78,226/- u/s. 80IC which was claimed at Rs.2,21,18,372/-. The AO in the reassessment took opposite view and considered that the sales price should have been taken at MRP and accordingly further added Rs.7,16,01,719/- as profit including Rs.4,89,49,308/- at Dehradun Unit. I find that the AO in the assessment for all earlier years have accepted the determination of the price mechanism in respect of sales to Sree Baidyanath Ayurved Bhawan Pvt. Ltd., Not only that the provisions of section 92BA (Domestic Transfer Pricing) came into force from assessment year 2013-14, and in that year the assessee obtained report of the auditor as required u/s. 92E in form no 3CEB and submitted the same before the AO. The AO also raised various queries in respect of the DTA in the said year. The entire mechanism of price fixation which was prevalent from earlier years was explained. Similar billing price at which manufactured products were sold to Shri Baidyanath Ayurved Bhawan P. Ltd., was accepted by the AO in that year after examination. In fact

the price fixation during the assessment year in question was also explained by the assessee vide his letter dated 4.8.2014 on specific query from the AO and the said price was accepted. The sale price was also not disputed in earlier years. It was explained that sale was made to Shri Baidnath Ayurved Bhawan P Ltd., at 45 to 50% of the MRP because the said medicines were sold by them under their brand developed by them after working for years, that they had also to incur all marketing expenses for sale through their net work, wholesale dealers, stockists and retailers to whom sufficient margin has to be given. I find that the sale was at arm's length which was accepted after examination of the same during the original assessment as well as in the next year under domestic transfer price mechanism. I also find that in the reassessment the AO has adopted the in computed in the original assessment meaning thereby he was of the view that the profit of Dehradun unit should have been only 23.78% and in the reassessment has reversed his own finding. The MRP of Sree Baidya Nath Ayurved Bhawan P Ltd. cannot be considered as sales price of the assessee since all marketing expenses are borne by the said party. The AO has not brought on record any evidence contrary to the claim of the assessee that the price fixed for any evidence contrary to the claim of the assessee that the price fixed for Shree Baidya Nath Ayurved Bhawan was fair and reasonable. Further the judgment of Satsang 193 ITR 321 is well founded. The Supreme Court clearly led down that the principles of consistency should be maintained when the facts continued to be the same. The reliance on the judgement of Delhi High Court in the case of Amadeus India Pvt Ltd. reported in 395 ITR page 659 also supports the view that when there was no change in modus operandi, rule of consistency should be followed. It will not be out of place to mention that if the version of the AO is accepted, the income as computed for Dehradun unit shall go up and shall form part of deduction u/s 80IC as has been held in the case of Durga Industries In ITA "No. 2376jDe12010 dated 21.9.2010, Special Bench Calcutta reported in 116 ITD page 1 and Delhi High Court decision reported in 289 ITR page 475. Further the AO has not given any basis as to why the MRP of Shri Baidyanath Ayurved Bhawan P Ltd., should be taken as sales price of the assessee. Hence the addition made by the AO Taking MRP as sales price is deleted.

In third ground, the assessee has disputed the disallowance of Rs.53,26,288/- out of advertisement expenses. The AO was of the view that 90% of the sales was to Sree Baidyanath Ayurved Bhawan P Ltd., and on the basis of matching principles 90% of the expense related to the sales of Sri Baidyanath Ayurved Bhawan P Ltd, The AO also found that the advertisement expenses were paid through group company. The AO therefore disallowed 90% of advertisement expenses. I find that the assessee has explained that the advertisement expense were incurred solely for marketing its own brand and

evidences of the same was filed in the course of assessment proceedings along with the advertised matters. The AO has not controverted the said evidences and explanation. In so far as the expenses as such are concerned, the same is not disputed. Therefore it hardly matters whether the payment is directly made or made through group company. The genuinity of the expenses incurred is not disputed. In view of the above the disallowance made in not maintainable. The same is deleted”.

7. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal for A.Y. 2012-13 on the following grounds:-

“1. On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the disallowance of claim for deduction u/s.80IC amounting to Rs.1,04,78,226 - ignoring the fact that the assessee attempted to inflate profit of Dehradun Unit to avoid paying any tax by way of claiming excess deduction u/s.80IC.

2. On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in ignoring the fact that the assessee company's is covered by the sub-section 10 to the section 80IA with relevance to the Section 80IC(7) of the I. T. Act,1961.

3. On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition made u/s.80IA(8) ignoring the fact that the assessee company could not give valid reasons for selling their products at prices which is only 45% to 50% of MRP to "Shree Baidyanath Ayurved Bhawan Pvt. Ltd..

4. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the disallowance of Advertisement Expenditure of Rs.53,26,288/- ignoring the fact that the assessee company has not booked any advertisement expenses for Dehradun Unit for making 100% sale to its associated/related companies whereas the company has claimed 100% advertisement expenses when only 10% sales has been made to the outside parties from Joka (Kolkata) unit and 90% of sales of manufactured goods by Joka unit made to its same associated/related companies”.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards the issue involved in Grounds No. 1 & 2 relating the deletion by the Id. CIT(Appeals) of the addition made by the Assessing Officer in the assessment originally

completed under section 143(3) by way of disallowance of assessee's claim for deduction under section 80IC to the extent of Rs.1,04,78,226/-, the Id. D.R. has relied on the order of the Assessing Officer in support of the Revenue's case. The Id. Counsel for the assessee, on the other hand, has submitted that the deduction claimed by the assessee under section 80IC in respect of profit derived from the eligible Dehradun Unit was restricted by the Assessing Officer on the ground that the profit of the said Unit as declared by the assessee was allegedly higher. In this regard, he has invited our attention to the relevant details furnished at page no. 561 of the paper book to point out that the profitability of Dehradun Unit was always higher and it was accepted by the Assessing Officer in the earlier years. He also submitted that the entire sales of Dehradun Unit was made by the assessee-company to its associate concern M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited and the transactions involving the said sales were the subject matter of Transfer Pricing exercise for A.Y. 2013-14. He has pointed out that the Transfer Pricing Officer after making the Transfer Pricing analysis based on comparable cases found the sale price charged by the assessee to M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited as at Arm's Length. As further pointed out by the Id. Counsel for the assessee, the reasons for the higher profit margin earned by the Dehradun Unit were also explained by the assessee by showing as to how the cost of production of the same Unit was lower due to various incentives and the availability of raw material at cheaper rates in the local market. Keeping in view all these relevant aspects highlighted by the Id. Counsel for the assessee as well as the other reasons given by the Id. CIT(Appeals) in his impugned order, we are of the view that there was no justifiable reasons for the Assessing Officer to doubt or dispute the higher rate of profit declared by the assessee-company in its Dehradun Unit and to estimate the same at a lower rate thereby restricting the claim of the assessee for deduction under section 80IC. In that view of the matter, we uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of assessee's

claim for deduction under section 80IC and dismiss Grounds No. 1 & 2 of the Revenue's appeal.

9. As regards the issue involved in Ground No. 3 relating to the deletion by the Id. CIT(Appeals) of the addition made by the Assessing Officer by invoking section 80IA(8), it is observed that the sale price charged by the assessee to the other group concern namely M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited was alleged by the Assessing Officer as understated by the assessee on the basis of M.R.P. of the relevant products. As explained on behalf of the assessee before the authorities below as well as before us, the MRP was the price finally charged by M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited to the ultimate consumers and the same, therefore, was inclusive of the profit of M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited as well as the substantial expenditure incurred by them including especially the marketing expenses incurred for selling the products through their network, which comprised of wholesale dealers, stockists, retailers etc. The MRP of the products of M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited thus was not comparable with the sale price charged by the assessee to M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited and since the price so charged had fetched a net profit of 45.17% to the assessee, we find that the allegation of the Assessing Officer regarding under charging of sale price by the assessee was totally unfounded. As a matter of fact, a contradictory stand taken by the Assessing Officer himself while restricting the claim of the assessee for deduction under section 80IC in respect of Dehradun Unit when he alleged that the profit of Dehradun Unit, which sold its entire production of M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited, was inflated by the assessee for claiming higher deduction under section 80IC. It is difficult to comprehend as to how the sale price could be lower when profitability shown by the assessee was higher. Moreover, the sale price charged by the assessee to its associate concern M/s. Shree Baidyanath Ayurved

Bhawan Pvt. Limited was the subject matter of Transfer Pricing Exercise in A.Y. 2013-14 and as already noted by us, the same was accepted by the Transfer Pricing Officer as at Arm's Length after carrying out the Transfer Pricing Analysis based on comparable cases. It was also pertinent to note here that the sale price charged by the assessee to M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited on the same basis was accepted by the Assessing Officer in the assessments for all the earlier years and there was no cogent material brought on record by the Assessing Officer to dispute the price mechanism adopted by the assessee in the year under consideration. Having regard to all these facts and circumstances of the case, we are of the view that the addition made by the Assessing Officer by alleging the understatement of sales price by the assessee on the basis of MRP of the relevant products was not sustainable and the Id. CIT(Appeals) was fully justified in deleting the same. We, therefore, uphold the impugned order of the Id. CIT(Appeals) on this issue and dismiss Ground No. 3 of the Revenue's appeal.

10. As regards the issue involved in Ground No. 4 relating to the deletion by the Id. CIT(Appeals) of the disallowance made by the Assessing Officer on account of advertisement expenditure, it is observed that the entire advertisement expenses incurred during the year under consideration were claimed by the assessee in Kolkata Unit. Since the sale of Kolkata Unit was only 10% of the total sales, the Assessing Officer allowed the advertisement expenses only to the extent of 10% and disallowed the balance 90%. As explained on behalf of the assessee before the Id. CIT(Appeals) as well as before us, the entire advertisement expenses were incurred by the assessee in respect of its own products, which were manufactured in Kolkata Unit whereas no advertisement expenses were required to be incurred in respect of Dehradun Unit where the entire sales was made to the sister concern M/s. Shree Baidyanath Ayurved Bhawan Pvt. Limited of their own products. It clearly shows that the entire expenditure incurred by the assessee on advertisement was

related to marketing of its own products sold under its own brand and since such products were manufactured solely in Kolkata Unit, we find ourselves in agreement with the Id. CIT(Appeals) that the disallowance made by the Assessing Officer out of advertisement expenses was not justified especially when the genuineness of the said expenses was never doubted or disputed by the Assessing Officer. We, therefore, uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer out of advertisement expenses and dismiss Ground No. 4 of the Revenue's appeal.

11. As regards the Revenue's appeal for A.Y. 2013-14 being ITA No. 2486/KOL/2017, it is observed that the solitary issue involved therein relating to the deletion by the Id. CIT(Appeals) of the disallowance made by the Assessing Officer on account of assessee's claim for deduction under section 80IC is similar to the one involved in Grounds No. 1 and 2 of the Revenue's appeal for A.Y. 2012-13 which has already decided by us in the foregoing portion of this order. As the material facts relevant to this issue as involved in A.Y. 2013-14 as well as the arguments of both the sides are similar to A.Y. 2012-13, we follow our conclusion drawn in A.Y. 2012-13 and uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of assessee's claim for deduction under section 80IC.

12. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on April 05, 2019.

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(P.M. Jagtap)
Vice-President (KZ)

Kolkata, the 5th day of April, 2019

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(2) ***M/s. Goodcare Pharma Pvt. Limited,
1, Gupta Lane, Kolkata-700 006***

(3) *Commissioner of Income Tax (Appeals)-4, Kolkata,*

(4) *Commissioner of Income Tax- ,*

(5) *The Departmental Representative*

(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.

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