IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

ITA No. 4240/DEL/2016 (AY 2010-11)

DCIT, CIRCLE 16(1), C.R. BLDG., NEW DELHI	VS.	MAHLE FILTERS SYSTEMS (INDIA) LTD., 1, SRI AUROBINDO MARG, NEW DELHI – 16 (PAN: AAACP5890Q)
(APPELLANT)		**(RESPONDENT)**

AND
ITA No. 4621/DEL/2016 (AY 2010-11)

MAHLE FILTERS SYSTEMS (INDIA) LTD. 1, SRI AUROBINDO MARG, NEW DELHI – 16 (PAN: AAACP5890Q)	VS.	DCIT CIRCLE 16(1) NEW DELHI
(APPELLANT)		**(RESPONDENT)**

Assessee by : Sh. Neeraj Jain, Adv. & Sh. Tavish Verma, Adv.
Revenue by : Ms. Harpreet Kaur Hansra, Sr. DR.

Date of Hearing	16.09.2025
Date of Pronouncement	15.12.2025

ORDER

PER MAHAVIR SINGH, VP:

These are cross appeals filed by the Revenue as well as Assessee are arising out of order of Ld. Commissioner of Income Tax (A)-(IX), New Delhi in Appeal No. 186/15-16 dated 02.05.2016. Assessment was framed by the

DCIT, Circle-6(1), New Delhi for the assessment year 2010-11 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") vide order dated 02.05.2016. Since these cross appeals are inter-connected, hence, the same were heard together and disposed of by this common order for the sake of convenience.

2. The first common issue raised in both the cross Appeals filed by the Revenue as well as Assessee is as regards to order of the CIT(A) restricting the addition made by the AO on after-market (trading) expenses should be allocated on the basis of total sales as against after-market (trading) sales basis adopted by the assessee and thereby making an addition of Rs. 9,66,690/- and deleting the balance disallowance of Rs. 3,74,32,865/- u/s. 80IC of the Act. For this, Revenue has raised following ground nos. 1 to 3 :-

> *"1. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Rs. 3,74,32,865/- u/s. 80IC ignoring the fact that the transaction was sham in nature and the purpose of following the circuitous route of first merging M/s Mahle Filter Systems (India) Ltd. With M/s Purolator India Ltd. And then changing the name of the company to M/s Mahle Filter Systems Ltd. was to get the benefit of deduction u/s. 80IC of the Act.*
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> *2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is justified in allowing deduction u/s. 80IC of the Act to the assessee ignoring a fact that use of substantial asset and manpower of amalgamating undertaking (Poona Unit) by the amalgamated (Parwanoo Unit) constituted reconstruction of the business u/s. 80IC(4) of the Act?*
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> *3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing deduction u/s. 80IC of the Act to the assessee ignoring ratio decidendi of Apex court in case of M/s Textile Machinery Corporation Limited vs. CIT (1997) 107 ITR 195 wherein it*

was held that transfer and use of substantial assets and manpower will amount to reconstruction of the business?"

2.1. Also for this, assessee has raised following ground nos. 1, 1.1 and 1.2 :-

"1. That the CIT(A) erred on facts and in law in holding that the after-market (trading) expenses should be allocated on the basis of total sales as against after-market (trading) sales basis adopted by the appellant and thereby making an addition of Rs. 9,66,690/-.

1.1 That the CIT(A) erred on facts and in law in holding that the marketing expenses incurred by the head office of the appellant promoted the sales of the appellant company in general and not just in respect of the trading sales.

1.2 *That the CIT(A) erred on facts and in law in not appreciating that the appellant was selling directly to Original Equipment Manufacturers (OEMs) from the Parwanoo unit and only selling to the retail customers through the head office of the appellant."*

3. Brief facts of the case are that the assessee is a company registered under the Companies Act, 1956 is *inter alia* engaged in the business of manufacturing and trading of Automotive and industrial filters. 50% share in the assessee is held by Mahle Filter Systems GMBH and 46% stake is held by Asia Investments Pvt. Ltd. Mahle Filter Systems Private Limited was a company incorporated under the Companies Act, 1956 and was engaged in the business of manufacture and trading of automotive and industrial filters at Pune. Erstwhile Mahle was a wholly owned subsidiary of Mahle Filter Systems GMBH. In order to expand its business operations and to synergize its business operations, the assessee entered into a scheme of arrangement for amalgamation of erstwhile Mahle into the assessment under section 391 and 394 of the Companies Act, 1956. The salient features of the arrangement are as under:-

i. Erstwhile Mahle is the transferor company;

ii. The assessee is the transferee company;

iii. All property, rights, interest, liabilities, duties and power of the erstwhile Mahle were to be transferred to and vested in the assessee;

iv. Once the scheme of amalgamation becomes effective, erstwhile Mahle shall stand dissolved.

v. Upon the amalgamation scheme becoming effective, name of the transferee company shall be substituted with the name of the transferor company.

The scheme of amalgamation was approved without any modifications by the High Court vide order dated 27.05.2008.

4. After the amalgamation, the assessee in accordance with terms of the amalgamation agreement, filed an application before the Registrar of Companies (ROC) requesting it to change assessee's name from Purolator India Limited to Mahle Filter Systems (India) Limited (by which it is presently known.) Pursuant to the aforesaid application, ROC, issued a certificate dated 4.9.2008, approving the change of name of the assessee. For the assessment year 2010-11, the assessee filed return of income on 30.09.2010, declaring income amounting to Rs. 203,124,692/- after claiming a deduction of Rs. 37,432,865/- under Chapter VI-A of the Act.

5. Subsequently, the Assessing Officer issued notice dated 27.08.2011 under section 143(2) of the Act and a questionnaire thereon under section 142(1) of the Act for initiating assessment proceedings in appellant's case. Consequently, an assessment order dated 31.01.2014 was passed by the AO

wherein, assessee's total income was assessed at Rs. 250,411,316/- after making the addition of Rs. 3,74,32,865/- on account of disallowance u/s. 80IC of the Act; Rs. 28,10,436/- on account of other income excluded while computing deduction under section 80IC of the Act; Rs. 82,50,719/- on account of reimbursement of expenses disallowed under section 40(a) of the Act for non deduction of tax at source; Rs. 9,036/- on account of disallowance under section 14A read with Rule 8D of the Rules and Rs. 32,34,071/- on account of disallowance of royalty payments. Against the aforesaid additions, assessee preferred the appeal before the Ld. CIT(A), who vide his impugned order 02.05.2016 has partially allowed the appeal of the assessee.

6. Aggrieved, Revenue as well as Assessee are in cross appeals before us.

7. The assessee before us, now contended that the re-computation of deduction u/s. 80IC of the Act claimed after marketing (trading) expenses should be allocated on the basis of total sales. It was further contended that during the relevant year, the assessee incurred certain after-market trading expenses amounting to Rs. 11,55,83,035/- which are allocated between the Head Office and manufacturing units in the ratio of after-market trading sales. It was further contended that without considering the previous years orders, held that the same should have been allocated on the basis of ratio of sales instead of after-market trading sales and recomputed the said expenses in the ratio of overall sales and not just in respect of after-market sales. The Ld. CIT(A) made the allocation as under:-

Expenses to be allocated	HO Trading	Khandsa	Parwanoo (80 IC Units)	Pune	Total
As per appellant	6,58,37,525	70,52,320	3,56,36,624	70,56,566	11,55,83,035
As per CIT(A)	1,91,17,433.99	3,22,70,783.37	3,65,70,472.27	2,76,24,345.37	11,55,83,035

8. The assessee has also filed detailed bifurcation of expenses and considered the total expenses and argued that the said after sales trading expenses have rightly been allocated by the assessee on the basis of aftermarket trading sales ratio. Since the said expenses have been incurred for making the aforesaid aftermarket trading sales. It was contended that the assessee follows consistent method of allocating the cost between the Head Office and manufacturing units in the ratio of after-market trading sales which has been accepted by the Revenue in previous years. Ld. Counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT 193 ITR 321 and stated that CIT(A) should not have gone into beyond the scope of powers of CIT(A) and no enhancement in the absence of show cause notice is required.

9. We have heard the rival contentions and gone through the facts and circumstances of the case, we noted that from the detailed chart filed in Assessee's submissions wherein, complete details of HO Trading, Sales of

Khandsa, Parwanoo Unit and Pune are depicted and even the details of expenses and summary allocation, which is as under:-

Particulars	HO	Khandsa	Parwanoo (80 IC Units)	Pune	Total
Aftermarket trading sales	513,714,086	55,027.529	27,80,63,847	55,060,659	11,55,83,035
Aftermarket trading sales ratio	56.96%	6.1%	31.1%	6.11%	
Aftermarket trading expenses allocated in aftermarket trading sales ratio	65,837,525	7,052,320	3,56,36,624	7,056,566	115583035

9.1 We noted that aftermarket trading expenses have rightly been allocated by the assessee on the basis of aftermarket trading sales ratio, since the said expenses have been incurred for making the aforesaid aftermarket trading sales. This issue has already been adjudicated by the Tribunal in assessee's own case for the assessment year 2009-10 vide common order dated 04.07.2019 passed in Assessee's ITA No. 314/Del/2015 & Revenue's ITA No. 6679/Del/2014 wherein, the Tribunal affirmed the finding of the CIT(A). Thus, we do not find any reason to deviate from the same finding, hence, respectfully following the precedent as aforesaid, we dismiss the ground no. 1 to 3 raised by the Revenue and that of the Assessee's ground nos. 1, 1.1 & 1.2 are allowed.

10. As regards ground Nos. 2, 2.1, 2.2 and 2.3 raised in assessee's appeal are concerned, the same were not pressed, hence, dismissed as such.

11. The next issue in Revenue's appeal is as regards to order of Ld. CIT(A) in restricting the deduction on account of re-computation of Arm's Length Price in transfer of stock to Head Office, in eligible profits of the Parwanoo Unit from Rs. 1,65,85,511/- to Rs. 36,57,047/-. For this, the Revenue has raised the following Ground No. 4:-

> *"4. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricted the reduction, on account of re-computation of arm's length price in transfer of stock to Head Office, in eligible profits of the Parwanoo unit from Rs. 1,65,85,511 to Rs. 36,57,047/- ignoring the fact that the AO has recomputed the profits attributable to the Parwanoo Unit on the basis of net profit of the Parwanoo Unit only and not on any estimation basis?"*

12. We noted that this issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for the assessment year 2009-10 vide common order dated 04.07.2019 passed in Assessee's ITA No. 314/Del/2015 & Revenue's ITA No. 6679/Del/2014 wherein, the Tribunal has held as under:-

> *"25. Provisions of section 80IA(12) of the Act have been wrongly applied by the Assessing Officer because the said provision is applicable where any undertaking which is entitled to the deduction u/s 80IA is transferred before expiry of the period specified therein to another India company in a scheme of amalgamation or demerger, whereas the facts of the case in hand show that the manufacturing unit at Parwanoo, HP continued to belong to the assessee and it is only M/s Mahle Filter systems [India] Ltd which amalgamated with the assessee M/s Purolator India Ltd and only the name has been changed to M/s Mahle Filter systems [India] Ltd. Accordingly, even consequent to the amalgamation, the unit at Parwanoo was still owned and managed by the assessee in the same manner as it was managed prior to amalgamation. Considering the correct facts in true perspective,*

we do not find any error or infirmity in the findings of the CIT(A). Ground Nos. 1 and 4 raised by the revenue stand dismissed."

12.1 As the aforesaid proposition was not controverted by the CIT(DR), we dismiss this issue raised by the Revenue and confirmed the order of the Ld. CIT(A).

13. The next issue raised in this Revenue's appeal is as regards to order of the CIT(A) disallowing the payments made to M/s Mahle Filter Systems Gmbh, Germany amounting to Rs. 82,50,719/- by invoking the provisions of section 40(a)(i) of the Act. For this, revenue has raised the ground no. 5 which reads as under:-

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 82,50,719/- made on account of disallowance u/s. 40(a)(i) of the Act of payments made of M/s Mahle Filter systems GmbH, Germany without complying with TDS provisions by completely ignoring the detailed findings of the AO on this issue?"

14. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that during the relevant assessment year assessee has reimbursed the following expenses to its group companies which had incurred such expenses on behalf of the assessee without deducting TDS.

Company to which expense reimbursed	Nature of expense reimbursed	Amount (Rs.)
Mahle Filter Systems GmbH	Expenditure on Global liability insurance cover obtained on behalf of the assessee	51,77,792

Mahle International GmbH	VPN/MARS charges on account of reimbursement of cost of IT services like access to intranet, ERP and mail access etc.	30,72,927

14.1 The AO stated that assessee has not deducted TDS u/s. 195 of the Act and therefore, invoked the provisions of section 40(a)(i) of the Act and made this disallowance. According to AO, the payments amounting to Rs. 30,72,927/- on account of VPN/MARS charges is taxable as Royalty in terms of section 9(1)(vi) of the Act and Rs. 51,77,792/- is taxable as fee for technical services u/s. 9(1)(vii) of the Act. The Ld. CIT(A) deleted the addition by holding that these payments are merely reimbursement and application of section 195 of the Act would be necessary, if the payments on account of reimbursement of expenses by the assessee to Mahle International GmBH is chargeable to tax in India. Ld. Counsel for the assessee further relied upon the decision of the Hon'ble Supreme Court in the case of GE India Technology Centre (P) Ltd. Vs. CIT 327 ITR 456 wherein, it has been held as under:-

> *"..That no tax is required to be deducted under section 195(1) of the Act from the payment to non-resident which are not chargeable to tax in India. The Supreme Court further held that the payer is required to obtain certificate under section 195(2) of the Act from the Assessing Officer only in a case where the payer is sure that the payment is liable to tax in India, but is not certain as to what part of payment would constitute 'income' chargeable to tax in India. In other words, where a person responsible for deduction is fairly certain that the payment is not chargeable to tax in India, he can make his own determination…"*

14.2 It is noted that since the payments on account of reimbursement of expenses made to M/s Mahle Filtersystems GmbH and Mahle International GmbH is not in the nature of income, therefore, no taxes is required to be withheld under section 195 of the Act and therefore, the disallowance u/s. 40(a)(i) of the Act has rightly been deleted by the Ld. CIT(A) and hence, we affirmed the same and accordingly, this ground raised by the Revenue stand dismissed.

15. The next issue in this appeal of the Revenue is as regards to the order of the CIT(A) deleting the addition of Rs. 15,94,004/- on account of capitalization of royalty payments. For this, Revenue has raised the following Ground No. 6:

> *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 15,94,004/- on account of capitalization of royalty payments, ignoring the fact that the expenses incurred by the assessee are for enduring benefit and therefore, capital in nature.?"*

15.1 At the outset, Ld. Counsel for the assessee stated that this issue is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for the assessment year 2009-10 vide common order dated 04.07.2019 passed in Assessee's ITA No. 314/Del/2015 & Revenue's ITA No. 6679/Del/2014 wherein, the Tribunal has adjudicated the similar issue vide its para no. 44 to 46 of the order, which read as under:-

> *"44. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that by virtue of agreement with its AEs, the assessee has only acquired limited rights to use the information for the purpose of production of products in India. There is also no dispute that the assessee merely acquired a right to use technical information provided by the owners of the technical know-how. The ownership/proprietary rights in the technical know-how continue to vest in lithe censor and the assessee is not authorised to transfer, assign or convey the know how/technical information to any third party and therefore, the assessee acquired a limited right to use and exploit the know-how. In our considered opinion, payment of royalty was for mere use of technical know-how, not resulting in any enduring benefit in the capital field, the same has to be allowed as revenue expenditure.*

45. Similar view was considered by the Tribunal in the case of Hero Motocorp in ITA No. 5130/DEL/2012. The relevant findings read as under:

> *"In the case of the assessee also, the collaboration agreement was for grant of technical assistance for setting up of the factory and also for the manufacture and sale of the product. But the assessee made separate payment for the technical assistance for setting up of the factory which was $5,00,000. This sum was treated as capital expenditure by the assessee itself. The annual payment for the royalty was based upon the percentage of sale of the motorcycles. Thus, the facts in the case of the assessee are distinguishable than the facts before the Hon'ble Apex Court. On the other hand, the facts of the assessee's case are identical to the facts before the Hon'ble Jurisdictional High Court in the case of Climate Systems India Ltd. (supra) and Sharda Motor Industrial Ltd. (supra) and also the decision of ITAT in assessee's own case cited supra. We, therefore, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that the annual payment of royalty was a revenue expenditure. Accordingly, ground No.6 of the assessee's appeal is allowed."*

46. This decision of the co-ordinate bench has been upheld by the Hon'ble High Court of Delhi in 372 ITR 481 wherein the Hon'ble High Court has, in detail, considered the decision given in the case of J.K. Synthetics [supra]. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the CIT(A). However, depreciation allowed by the Assessing Officer has to be withdrawn since the impugned payment is being allowed as revenue expenditure. Ground No. 5 of the revenue stands dismissed."

15.2 In view of above factual matrix, we do not find any reason to deviate from the aforesaid finding, hence, respectfully following the precedent as aforesaid, we affirm the action of the Ld. CIT(A) in deleting the addition in dispute. Accordingly, this ground raised by the Revenue is dismissed.

16. In the result, the Revenue's appeal is dismissed in above terms.

17. As regards remaining issue in Assessee's appeal is as regards to the order of the Ld. CIT(A) in adding the compensation cost to the HO from the

Parwanoo Unit as a mark up 10% for compensating the marketing services rendered by the head office in relation to selling of stock on notional basis. For this, assessee has raised the following ground nos. 3, 3.1, 3.2 and 3.3 which are reproduced as under:-

> *"3. That the AO erred on fats and in law in re-computing the deduction claimed under section 80IC of the Act without appreciating that deduction had been claimed by the appellant on the basis of a report in Form 10CCB issued by a Chartered Accountant.*
>
> *3.1 That the CIT(A) erred on facts and in law in adding a markup of 10% on the cost allocated by the head office to the Parwanoo unit as compensation for the marketing services rendered by the head office in relation to settling of the stock on notional basis.*
>
> *3.2 That the CIT(A) erred on facts and in law in holding that the provisions of section 80IA(8) of the Act are not applicable since the goods were transferred from the Parwanoo Unit to the Head Office for the sales and not consumption.*
>
> *3.3 That the AO erred on facts and in law and failed to appreciate that the expenses incurred by the head office in undertaking such sales have voluntarily been allocated to the manufacturing unit at Parwanoo and no costs have been charged in the books of the head office in respect of such sales".*

18. During the course of assessment proceedings, the AO alleged that the assessee has shifted the profit from the Head office to the manufacturing unit at Parwanoo. Since the AO noted that the assessee had incurred expenses in selling such goods and hence, AO estimated the net profit rate at Parwanoo Unit @11.94% and therefore, the profit on the stock transferred amounting to Rs. 27,78,07,566/- was Rs. 3,31,70,223/-. The AO divided the profit equally among head office and the Parwanoo unit, thereby, reducing the deduction under section 80IC of the Act from Rs. 3,74,32,865/- to Rs. 3,40,43,711/-.

19. Now before us, at the time of hearing, Ld. Counsel for the assessee stated that the Tribunal in assessee's own case for the assessment year 2009-10 vide common order dated 04.07.2019 passed in Assessee's ITA No.

314/Del/2015 & Revenue's ITA No. 6679/Del/2014 has duly considered the exactly similar facts and accepted the method adopted by the assessee, instead of estimation done by the AO @10%. We noted that the Tribunal has considered this issue vide para nos. 22 to 25 wherein, the Tribunal affirmed the contention taken by the assessee that no estimation can be made on adhoc basis. The relevant para nos. 23 to 25 are reproduced as under:-

> *"23. We are of the considered opinion that the Assessing Officer has not appreciated the underlying facts in issue in true perspective. Correct facts are that the manufacturing unit at Parwanoo, Himachal Pradesh was eligible for deduction u/s 80IC of the Act. The said undertaking belongs to M/s Purolotor India Ltd. The Assessing Officer proceeded by wrong assumption of facts that M/s Purolator India Ltd got amalgamated with M/s Mahle Filter Systems [India] Ltd whereas the fact of the matter is that Mahle Filter systems [India] Ltd was the transferor company and amalgamated with M/s Purolator India Ltd which was the transferee company by order of the Hon'ble High Court of Delhi in the matter of Scheme of Amalgamation of Company Petition No. 53/2008 connected with Company Application No. 172/2007. Subsequently, the name of M/s Purolator India Ltd was changed to M/s Mahle Filter Systems [India] Ltd.*
>
> *24. According to the ld. DR, this is nothing but a sham transaction to take the benefit of section 80IC of the Act. We do not find any force in this contention of the ld. DR. The Scheme of Amalgamation has been approved by the Hon'ble High Court of Delhi and, therefore, by no stretch of imagination, the transaction of amalgamation can be considered as a colourable device or a sham transaction. There is no dispute that the manufacturing unit at Parwanoo was eligible for deduction u/s 80IC of the Act the same always belonged to the assessee, previously known as M/s Purolator India Ltd.*
>
> *25. Provisions of section 80IA(12) of the Act have been wrongly applied by the Assessing Officer because the said provision is applicable where any undertaking which is entitled to the deduction u/s 80IA is transferred before expiry of the period specified therein to another India company in a scheme of amalgamation or demerger, whereas the facts of the case in hand show that the manufacturing unit at Parwanoo, HP continued to belong to the assessee and it is only M/s Mahle Filter systems [India] Ltd which amalgamated with the assessee M/s Purolator India Ltd and only the name has been changed to M/s Mahle Filter systems [India] Ltd. Accordingly, even consequent to the amalgamation, the unit at Parwanoo was still owned and managed by the assessee in*

the same manner as it was managed prior to amalgamation. Considering the correct facts in true perspective, we do not find any error or infirmity in the findings of the CIT(A). Ground Nos. 1 and 4 raised by the revenue stand dismissed."

20. We find that this issue also stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case as reproduced above, hence, respectfully following the same, we direct that no mark up of 10% of cost allocations can be taken by the AO. Accordingly, we allow this issue in favour of the assessee.

21. In the result, the appeal of the assessee is partly allowed in above terms.

22. Resultantly, the Appeal filed by the Revenue stands dismissed and that of the appeal filed by the Assessee stands partly allowed.

Order pronounced in the Open Court on 15.12.2025.

SD/-	**SD/-**
(KRINWANT SAHAY) **ACCOUNTANT MEMBER**	**(MAHAVIR SINGH)** **VICE PRESIDENT**

SRBhatnaggar

Date: 15-12-2025

Copy forwarded to: -

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

Assistant Registrar, ITAT,
Delhi Benches