

आयकर अपीलिय अधिकरण, मुंबई "सी" खंडपीठ

Income-tax Appellate Tribunal " C "Bench Mumbai

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Shri Joginder Singh, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./I.T.A./3367/Mum/2009, निर्धारण वर्ष /Assessment Year: 2004-05

Zoetis Pharmaceuticals Research Private Ltd.(formerly known as Pfizer Pharmaceuticals India Pvt. Ltd.) 31 & 32, 3 rd Floor, Kalpataru Synergy Opp. Grant Hyatt,Santacruz(E) Mumbai-400 055. PAN:AADCP 5293 L	Vs.	Dy. CIT, Range-8(2) Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A./3532/Mum/2009, निर्धारण वर्ष /Assessment Year: 2004-05

Dy. CIT, Range-8(2) Mumbai-400 020.	Vs.	Zoetis Pharmaceuticals Research Private Ltd.Mumbai-400 055.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri M. Dayasagar-CIT-DR

Assessee by: Shri Vallabh Gokhale-AR

सुनवाई की तारीख / **Date of Hearing: 11.05.2016**

घोषणा की तारीख / **Date of Pronouncement: 08.07.2016**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.17.03.2009 of CIT(A)-VIII,Mumbai,the Assessee and the Assessing Officer(AO)have filed cross appeals.Assessee-company,engaged in the business of trading, marketing and export of bulk drugs,filed its return of income 01.11.2004, declaring total income at Rs.Nil.The assessment order u/s.143(3) of the Act, was passed on 29.12.2006, determining the total income of the assessee at Rs.3.71 crores under normal provisions and at Rs.26.50 crores u/s. 115JB of the Act.

ITA.3532/M/2009:

2.The solitary Ground of appeal,raised by the AO,is about deleting the interest levied u/s. 234 B and 234C of the Act.While completing the assessment the AO had levied interests under the said sections of the Act.

2.1.During the appellate proceeding the First Appellate Authority (FAA)held that interest u/s. 234B and 234C cannot be levied when tax was to be computed u/s. 115JB of the Act. He referred to the case of Kwality Biscuits Ltd.(284 ITR 434) of the Hon'ble Supreme Court . During the course of hearing,the Departmental Representative (DR) left the issue to the discretion of the Bench.The Authorised Representative (AR) relied upon the case of Kwality

Biscuits (supra) and Rolta India Ltd. (330 ITR 470). We find that the issue stands covered in favour of the assessee by the above referred two judgments of the Hon'ble Apex Court. Respectfully, following the above judgments, Ground raised by the AO is dismissed.

ITA/3367/Mum/2009:

3.First Ground of appeal is about addition of Rs.1.80 lakhs. During the assessment proceedings, the AO found that the assessee had written off an amount of Rs.1,80,175/- as provision for bad debts. He directed the assessee to furnish the details and allowability of its claims. Referring to the provisions of section 36(1)(viii) of the Act and after considering the submissions of the assessee, the AO disallowed the amount in question.

3.1.Aggrieved by the order of the AO the assessee preferred an appeal before the FAA. Before him, it was argued that the disputed amount was towards provisions of bad debts written back and not towards bad debts written off. After considering the submission of the assessee, the FAA held that the assessee had not furnished the necessary details before the AO, that the assessee had submitted photocopies of ledger account, that same could not be considered by him, that the assessee had not shown reasonable cause for admitting new evidence. The FAA referred to the provisions of section 36(1)(viii) and held that deduction could be allowed only if the debts had become bad, that the assessee had failed to furnish any evidence about the debts becoming bad. Finally, he upheld the order of the AO.

3.2.Before us, the AR stated that the amount in question represented the provisions for 'writing back of bad debts' and not 'writing off of bad debts, that the deduction was claimed in computation of income, that the amount written back was included under miscellaneous expenses and was debited to P&L account. The DR stated that matter could be decided on merits.

3.3.We have heard the rival submissions and perused the material before us. We find that the AO and the FAA had lost sight of the basic fact that it was the case of writing back the provisions of bad debts. The assessee had not written off any bad debts during the year under appeal. The mistake committed by them in understanding the basic principle of accountancy lead to the impugned addition. Reversing the order of FAA, we decide first Ground of appeal in favour of the assessee.

4.Second Ground deals with addition of Rs.1.54 crores as short recovery of export proceeds. From the perusal of the case record, the AO noticed that the assessee company has debited an amount of Rs.1,54,77,795/- as Foreign Exchange(FE)Gain/Loss. The AO asked the assessee

to furnish the details of the same and the reason for the allowability of the same. In response, the assessee company submitted the following details:-

<i>Details of Exchange Gain/Loss</i>		
<i>Sl.No.</i>	<i>Account No.</i>	<i>Total</i>
1.	9377301	6504345
2.	9377401	317231
3.	9377801	7789228
4.	9377901	866992

The AO further asked the assessee to furnish the basis on which it had claimed the FE loss. The assessee stated the FE loss represented short recovery of export proceeds made during the year and was allowable as normal business expenditure, that it was not in respect of purchase of any capital assets. However, the AO disallowed the claim holding that short recovery of export proceeds amounted to bad debts.

4.1. Aggrieved by the order of AO the assessee preferred an appeal before the FAA. Before him it was argued that FE loss debited to P&L A/c. was due to difference of exchange rate at the time of issuing invoice and actual remittance received, that the FE loss was not on account of short recovery of export proceeds as held by the AO, that the AO had erroneously treated it as bad debts. After considering the submission of the assessee and the assessment order the FAA held that the AO had asked the assessee to submit details of FE loss, that no details were filed, that the assessee had submitted written reply during appellate proceedings, that no evidence was filed to substantiate the claim. Finally, he upheld the addition made by the AO.

4.2. Before us, the AR contended that the assessee had submitted the note on foreign currency transaction at Schedule-15 to the notes on accounts, the details of freeing exchange loss was submitted vide its letter dt.28.8.2006. He referred to page No 141, 142, 147, 149, 151, 155, 157, 159, 163-65, 167 and 171 of the PB. He further argued that expenditure was allowable u/s.37(1) of the Act. The DR supported the order of the FAA.

4.3. We have heard the rival submissions and perused the material before us. We find that the issue needs further verification as the paper referred to by the AR have to be considered for arriving at the final conclusion. Therefore, in the interest of justice we are restoring the matter back to the file of AO for fresh adjudication who will decide the issue after considering the submissions of the assessee. Ground No.2 is decided in favour of the assessee, in part.

5. Ground No.3 is about addition of Rs.9.50 lakhs towards software expenses treated as short term capital loss. During the course of assessment proceedings the AO found that the assessee had Debited to P&L A/c. an amount of Rs.9,50,590/- including miscellaneous expenses on

account of loss on sale of assets. He directed the assessee to furnish the justification for allowability of the same. The assessee stated that same was claimed as per the provisions of section 22 of the Act. As per the AO the assessee did not file any evidence to support its claim. Therefore, he added Rs.9.50 lakhs to the total income of the assessee.

5.1. Before the FAA the assessee argued that incurred an amount of Rs.9.50 lakhs towards computer software expenses, that the amount did not represent loss on sale of assets as inadvertently submitted during the course of assessment proceedings, that the loss on sale of assets amounting to Rs.65,817/- had been shown separately in Schedule-11 forming part of P&L A/c. of the compilation for the year ended 31.3.2004, that the amount had been disallowed and added back to the total income in the computation of income for the year under appeal, that the amount in question represented software expenses.

The FAA observed that the assessee had not filed any evidence to substantiate its claim, that it had submitted additional evidences in form of Schedule No.12 and 13, that assessee had not shown any reasonable cause for not filing said evidence before the AO. He, finally, endorsed the view of the AO.

5.2. During the course of hearing before us, the AR admitted that certain details were filed before the FAA for the first time especially, that the nomenclature of the expenditure was never verified by the AO, that he had no objection if the matter was restored to the file of AO for fresh adjudication. DR left the issue to the discretion of the Bench.

5.3. We have heard the rival submissions. We find that AO did not have the benefit of the claim made before the FAA as well as details of P&L account groupings. To meet the ends of justice, we are restoring the issue to the file of the AO who would decide the issue after affording a reasonable opportunity of hearing to the assessee.

6. Fourth Ground pertains to addition of Rs.2.08 crores under the head unexplained credits. The AO, during the assessment proceedings, found that the assessee had claimed that the amount in question represented creditors. He asked the assessee to furnish the reasons to show cause as to why the sundry creditors (general account- sales tax-46.64 lakhs + provision for excise on gum assets-1.38 crores+ customers stockists provision account -22.18 lakhs) should not be considered as unexplained creditors. As per the AO the assessee did not file any details in that regard. The AO made a disallowance of Rs.2,08,77,139/- .

6.1. Before the FAA, the assessee contended that the AO had failed to appreciate that those amounts were incurred as expenditure in earlier years and could not be disallowed during the year, that the disallowance in earlier years for sales tax and excise was made, that the

deduction could be claimed only on payment basis under section 43B of the Act, that the AO had ignored the note in Annexure-5 to the tax audit report with regard to sales tax amounting to Rs.46.64 lakhs, that the dispute amount did not represent liability created during the year under appeal, that provision for excise on gum assets was not created during the year under consideration, that the customer stockist provision account represented the amounts to be paid back to stockists, that it was a normal incident of the business and was a regular feature at every year end. The FAA held that the assessee had not produced any evidence before the AO, that he was justified in making the addition.

6.2. Before us, the AR stated that the AO had directed the assessee to file the breakup of sundry creditors, that it had filed the details required by the AO, that the AO treated it as unexplained credit, that he did not consider the fact that credit balances of the earlier years could not be considered for making addition for the year under consideration. He referred to pg.s.48-49, 54-57, 70-73 of the PB. The DR supported the order of the FAA.

6.3 After considering the available material, we are of the opinion that the issue needs further verification at the level of AO. As per the settled principles of taxation jurisprudence opening balances of a particular year cannot be added u/s. 68 of the Act. The pages referred by the AR clearly show that the AO had ignored the vital facts that assessee had shown opening balances of the creditors while filing the explanation before him. Therefore, in the interest of justice we are restoring back the issue to the file of the AO for fresh adjudication as stated earlier. He is directed to afford a reasonable opportunity to the assessee. He is also directed to verify the claim made by the assessee. Ground No.4 is decided in favour of the assessee in part.

7. Last Ground of appeal is about denying set off of brought forward losses/unabsorbed depreciation as claimed in return of income on the ground that the business for which the loss was originally computed had been discontinued.

7.1. Before the FAA the assessee argued that the provisions for carry forward, set off of business losses were governed by section 72 and not by section 71(1)(i), that the proviso in connection with the continuance of business had been omitted by the Finance Act, 1999 w.e.f. 1.4.2000. After considering the submission of the assessee the FAA held that as per the proviso of Section 72 the unabsorbed losses that were discontinued could be set off against the profit and gains, if any, of that business, that the assessee had no business income for the year, that the AO had rightly disallowed the claim.

7.2.The AR made the same submission that were advanced before FAA. He referred to memorandum explaining the provision in Finance bill 1999, that the assessee was entitled to bring forward business losses of the earlier years. The DR relied upon the order of the FAA.

7.3.We have heard the rival submissions and perused the material before us in our opinion provisions of section 72 would be applicable in the present case and not the provisions of section 71,as held by the AO and the FAA.We further find that the pre-condition of continuation of business has been dispensed with by the Fin bill 1999. Therefore, we are of the opinion that the claim made by the assessee should have been allowed. Reversing the order of the FAA,we decide the issue in favour of the assessee.

As a result, appeal filed by the assessee stands partly allowed and appeal of the AO stands dismissed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है एवं निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 8th July,2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 8 जुलाई, 2016 को की गई।

Sd/-

Sd/-

जोगिन्दर सिंह /Joginder Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांकDated : 08 .07.2016.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ C” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, सी खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.