

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपीलसं/I.T.A. No.2248/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2002-03)

Bayer CropScience Limited Bayer House, Central Avenue, Hiranandani Estate, Thane(W) - 400607	बनाम/ Vs.	Asst. Commissioner of Income Tax 15(1)(2) Aaykar Bhavan, M.K.Road, Mumbai - 400020
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. AAACB9651K		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mayur Kisnadwala
Department by:	Shri M. C. Omi Ningshen

सुनवाईकीतारीख / Date of Hearing: 11.01.2017
घोषणाकीतारीख /Date of Pronouncement:. 10.02.2017
आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 19.01.2015 passed by the Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2002-03.

2. The assessee has raised the following grounds:-

- “1. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of consultancy charges of Rs.27,86,230/- incurred on

designing and implementation of TDS and other systems.

- 1.1 Without prejudice to the above, even after considering the above expenses as capital in nature, the CIT(A) erred in not directing the AO to grant depreciation on the same as allowable under the Income Tax Act, 1961 ('Act').*
- 2. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the disallowance u/s.14A of the Act to the extent of 10% of the total exempted income.*
- 3. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of AO of not granting a deduction of Rs.1,61,500/- towards refurnishing inspite of directions of Honorable Income Tax Appellate Tribunal, Mumbai in this respect and presuming that the ground is not pressed."*

3. The brief facts of the case are that the assessee filed its return of income on 29.10.2002 declaring total income to the tune of Rs.32,33,45,800/-. The assessment was completed u/s.143(3) of the Income Tax Act, 1961 (in short "the Act") on 24.03.2005 at the total income of Rs.33,23,24,763/-. The Hon'ble ITAT, Mumbai in their order dated 02.01.2013 in ITA No.2902/Mum/2007 has set aside the following issues to the file of the Assessing Officer for fresh adjudication:

- (i) Disallowance of software licence fee of Rs.7,33,660/-.
- (ii) Disallowance of consultancy charges of Rs.27,86,230/- incurred for designing and implementation of TDS and other systems.

- (iii) Non granting of depreciation claim on the disallowance of consultancy charges by observing that the system was put to use in the subsequent year.
- (iv) Disallowance under section 14A to be adjudicated after considering the Hon'ble Bombay High Court judgment in the case of Godrej & Boyce Mfg. Co. Ltd.

Thereafter considering the above said points the Assessing Officer completed the assessment by assessing total income to the tune of Rs.33,15,91,103/-. Feeling aggrieved the assessee filed an appeal before the CIT(A) who partly allowed the appeal of the assessee. Feeling aggrieved the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the confirmation of disallowance of consultancy charges of Rs.27,86,230/- incurred on designing and implementation of TDS and other systems. The learned representative of the assessee has argued that the assessee is in the business of manufacturing, purchasing, processing and refining crop protection goods etc. The said expenditure was incurred for improvement and rationalization of the existing system, to make it compatible with the Indian legal requirements. The changes made to the existing system were with respect to the TDS and Works Contract Tax System, Security Deposit Management System, Excel Vouchers upload systems, interface of auto-booking of excise / CENVAT to BayMAP system, sales tax administration – sales, sales tax administration – purchases, maintaining capital work in progress, forex

payable and leased assets etc. it is also argued that the Assessing Officer has wrongly applied the law whereas the designing and development of software was not an enduring benefit to the company, hence, it is revenue in nature and also relied upon the law settled in *Commissioner of Income Tax Vs. Raychem RPG Ltd. [2012] 346 ITR 138 Hon'ble Bombay High Court and Commissioner of Income Tax Vs. Asahi India Safety Glass Ltd. [2012] 346 ITR 329 Hon'ble Delhi High Court*. However, on the other hand the learned representative of the department has strongly relied upon the order of the CIT(A) in question. Keeping in view of the argument advanced by the parties and by going through the record carefully, it came into the notice that the assessee is in the business of manufacturing, purchasing, processing and refining crop protection goods etc. The expenditure was incurred for the improving and rationalizing of system such as TDS and Works Contract Tax System, Security Deposit Management System, Excel Vouchers upload systems, interface of auto-booking of excise / CENVAT to BayMAP system, sales tax administration – sales, sales tax administration – purchases, maintaining capital work in progress, forex payable and leased assets etc. In view of the said facts and circumstances, it is quite clear that it is revenue expenditure and the case of the assessee is fairly covered by the law settled in *Commissioner of Income Tax Vs. Raychem RPG Ltd. [2012] 346 ITR 138 Hon'ble Bombay High Court and Commissioner of Income Tax Vs. Asahi India Safety Glass Ltd. [2012] 346 ITR 329 Hon'ble Delhi High Court*. In view of the said circumstances, we set aside the finding of the CIT(A) on this issue and also the expenditure to the tune of Rs.27,86,230/- is being

treated as revenue is nature. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.1.1:-

5. Under this issue the assessee took the alternate plea to treat the consultancy charges to the tune of Rs.27,86,230/-, if any, capital in nature and to allow the depreciation thereon but the said expenditure has already been treated as revenue expenditure, therefore, this plea has no force in the eyes of law, hence there is no need to decide the alternate plea.

ISSUE NO.2:-

6. Under this issue the assessee has challenged the confirmation of the disallowance u/s.14A of the Act to the extent of 10% of the total exempted income. The learned representative of the assessee has argued that as against the investment of Rs.1,69,27,000/-, the assessee's own fund was Rs.81 crores, therefore in the said circumstances the investment to earn the exempt income was required to be treated from its own fund, hence no expenditure of any kind is required to be deducted in view of the law settled in *Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (313 ITR 340)*. On the other hand, the learned departmental representative has refuted the said contentions. In view of the argument advanced by the learned representative of the parties and perusing the record carefully, it came into the notice that the assessee received dividend income to the tune of Rs.33,62,664/- from domestic companies and dividend of Rs.44,48,718/- from mutual funds and claimed it as exempt u/s.10(33) of the Act. An investment of Rs.1,69,27,000/- was made in UTI during the year.

The appellant was having interest bearing funds having average rate of interest was 9.95%. The Assessing Officer disallowed the interest to the tune of Rs.16,85,000/-. The contention of the assessee is that the assessee was having interest free funds amounting to Rs.8.1 crores, therefore no interest is required to be disallowed.

7. The present assessment year is 2002-03 in which there is no applicability of the provision of section 14A read with Rule 8D of the Act in view of the law settled in *Hon'ble Bombay High Court in Godrej & Boyce Ltd. reported in 328 ITR 81*. No doubt the CIT(A) confirmed the disallowance to the extent of 10% of the expenditure but did not consider the plea of the assessee with regard to the investment from its own fund to the tune of Rs.81 crores. The balance sheet of the assessee is on the file which lies at page 23 to 36 of the paper book and speaks that the assessee's own fund is more than the investment. However, in this regard the details have also been given to the Assessing Officer by virtue of letter dated 13.12.2004. The investment in shares has been mentioned below:-

- 2,87,350 Equity shares of Bayer Diagnostics India Limited (Valued in the Balance Sheet at Rs.2,53,29,903)
- 10,44,240 Units of Unit 64 issued by UTI (Valued in the Balance Sheet at Rs.1,69,27,217)

In respect of Investment in Bayer Diagnostics Limited, we want to state that such investment was on account of sale consideration for sale of division in the form of shares, hence no borrowed funds were used for this investment.

For Investment in UTI (Unit 64) we give below the following analysis:

Sr. No.	Previous Year	Investments in Units		Funds from Operation Amount
		Quantity	Amount	
1	1981	25,500	326,400	26,863,000
2	1985	25,000	367,500	100,513,000
3	1990-91	15,000	230,250	177,446,000
4	1991-92	20,000	309,000	224,000,000
5	1992-93	2,61,100	4,031,395	267,317,000
6	1993-94	1,38,600	1,774,080	277,335,000
7	1994-95	97,040	1,436,192	91,911,000
8	1998-99	37,000	562,400	176,845,000
9	1999-00	3,25,000	4,940,000	214,103,000
10	2000-01	2,00,000	3,050,000	213,118,000
	TOTAL	1,044,240	16,927,217	1,556,330,000

Funds from the operation = Profit before Tax ÷ Depreciation

From the facts and figures mentioned above, it noticed that own fund is more than the investment, therefore in the said circumstances no expenditure is required to be deducted in view of the law settled in *Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (313 ITR 340)*, accordingly, we delete the expenditure assessed by the CIT(A) in view of the provision u/s.14A of the Act. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO.3

8. Under this issue the assessee has challenged the confirmation of the action of the Assessing Officer for not granting a deduction of Rs.1,61,500/- towards refurbishing inspite of directions of Hon'ble Income Tax Appellate

Tribunal, Mumbai. The Assessing Officer presumed that this ground has not been pressed. But it is not so. This ground is required to be adjudicated. In the said circumstances, it is directed that the Assessing Officer must comply with the directions issued in ITA No.2902/Mum/2007 dated 02.01.2013 and to decide the issue afresh accordingly by giving an opportunity of being heard to the assessee. Accordingly, this issue is decided in favour of the assessee against the revenue.

9. In the result the appeal filed by the assessee is hereby **Partly Allowed for statistical purpose.**

Order pronounced in the open court on 10th February, 2017.

Sd/-

(D.KARUNAKARA RAO)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 10th February, 2017

MP

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai