

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'A' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

I.T.A. No.2430/Del/2011
Assessment Year : 2006-07

Ranbaxy Laboratories Ltd
12th Floor, Devika Towers,
6, Nehru Place, New Delhi
[PAN : AAACR 0127 N]

.....**Appellant**

Vs.

Addl. Commissioner of Income-tax
Range-15, New Delhi

.....**Respondent**

I.T.A. No.3094/Del/2011
Assessment Year : 2006-07

Addl. Commissioner of Income-tax
Range-15, New Delhi

.....**Appellant**

Vs.

Ranbaxy Laboratories Ltd
12th Floor, Devika Towers,
6, Nehru Place, New Delhi
[PAN : AAACR 0127 N]

.....**Respondent**

Appearances by:

SN Soparkar for the assessee
Aparna M Agarwal for the Revenue

Date of concluding the hearing: 27.11.2017
Date of pronouncing the order: 14.02.2018

ORDER

Per Pramod Kumar, AM:

1. These cross appeals are directed against learned CIT(A)'s order dated 28th March 2011, in the matter of assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter), for the assessment year 2006-07.

2. So far as the appeal filed by the assessee is concerned, solitary grievance of the assessee is as follows :-

“That on law, facts and in the circumstances of the case, the Ld. CIT(A) has erred in not allowing Rs.2,95,18,083/- as business deduction, charged to Profit & Loss account during the year under appeal, being the deferred employees compensation on account of company’s Employees Stock Option Scheme (ESOP).”

3. Learned counsel for the assessee fairly points out that the learned CIT(A) has merely followed his own order for the assessment year 2005-06 which was approved by this Tribunal vide a co-ordinate bench’s order dated 21.05.2010. He, however, adds that this issue was thereafter subject matter of a Special Bench of this Tribunal, in the case of Biocon Limited vs. DCIT [(2014) 144 ITD SB 21], and by Hon’ble Madras High Court in the case of CIT vs. PVP Ventures Limited [(2012) 23 taxmann.com 268 (Mad)]. Following these binding judicial precedents, another co-ordinate bench, in assessee’s own case - reported as Ranbaxy Laboratories Limited vs ACIT [(2016) 68 taxmann.com 322 (Del)], has decided the same issue in favour of the assessee. We are thus urged to follow the later decision, which follows the Special Bench decision in the case of Biocon Limited (supra) and Hon’ble Madras High Court decision in the case of PVP Ventures (supra), and uphold assessee’s grievance on this issue. Learned Departmental Representative relies upon the orders of the authorities below.

4 We find that once higher tiers of judicial hierarchy, i.e. a Special Bench of this Tribunal as also Hon’ble High Court, have expressed view in favour of the assessee, the earlier decisions of his Tribunal cease to have any binding force. Following the binding judicial precedents in Biocon’s case (supra) and in PVP Ventures case (supra) and following the co-ordinate bench decision in assessee’s own case for the assessment year 2008-09, which is in harmony with those binding precedents, we uphold the grievance of the assessee – as, beyond any dispute or controversy, the issue in appeal is squarely covered by these decisions. The disallowance of Rs.2,95,18,082/-, on account of deferred employee compensation on account of ESOP, is deleted.

5. The appeal of the assessee is thus allowed.

6. We now take up the appeal filed by the Assessing Officer.

7. In the ground no.1, the Assessing officer has raised the following grievance :-

“That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition/disallowance made u/s 43B(b) of the I.T. Act, amounting to Rs.13,17,69,466/- being provision for pension based on actuarial valuation.”

8. Learned representative fairly agree that the learned CIT(A) has merely followed his order for the assessment year 2005-06 and a co-ordinate bench of this Tribunal has approved the said order on this point by observing as follows :-

"5. Ground No. 1 of the revenue's appeal. Identical issue was decided by the Tribunal in ITA No. 2613/Del/2004 & Ors. in assessee's own case vide order dated 12.6.2009 wherein the Tribunal has held as under:-

"16. We have carefully considered the rival submissions. This issue is found to be covered by the aforementioned decision of Tribunal in assessee's own case for A.Y. 1999-00. For the sake of clarity the relevant portion from the said order is reproduced below: -

"The next dispute in the Revenue's appeal for A.Y. 1999- 2000 relates to disallowance of Rs. 1,99,73,822/- made by the AO by applying the provisions of sec. 43B(b) on account of provision for pension.

We have heard both the sides and gone through the records. Earlier the assessee was having a superannuation scheme with the LIC wherein the contributions were made at certain percentage of salaries of the employees. The pension payable under the said superannuation scheme was found to be too low and the assessee found it difficult to attract and retain management of employees. A new pension scheme was introduced w.e.f. 01.11.1997. This pension was applicable to all management employees and was non funded. In other words, no separate fund was created and the pension was payable to the employees upon their resignation/retirement or to the family members in the event of death of the employee. The assessee got the fresh actuarial valuation. The incremental difference was debited to the P&L A/c. The CIT(A) allowed the provision and held that there can no question of disallowance u/s 43B of the Act.

We have gone through the impugned order and in the light of the fact that there was no contribution of any pension to any fund and the assessee has only provided on the basis of the actuarial valuation, the additional liability. The question of disallowance of same u/s 43B is clearly mi-spelt. We, therefore, agree with the reasoning given by the CIT(A) and decline to interfere."

5.1 Respectfully following the precedent, we uphold the order of the Ld. Commissioner of Income Tax (Appeals) and decide the issue in favour of the assessee."

9. In view of the above factual position and bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) on this point, and decline to interfere in the matter.

10. Ground no.1 is thus dismissed

11. In the ground no.2, the Assessing officer has raised the following grievance :-

"That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of weighed deduction u/s 25(2AB) in respect of

expenditure on scientific Research & Development carried in approval in-house facilities amounting to Rs.2,49,95,808/-"

12. Learned representative fairly agree that the learned CIT(A) has merely followed his order for the assessment year 2005-06 and a co-ordinate bench of this Tribunal has approved the said order on this point by observing as follows :-

"8. Ground No. 5 of the revenue's appeal. Identical issue was decided by the Tribunal in ITA No. 2613/Del/2004 & Ors. vide order dated 12.6.2009 wherein the Tribunal has held as under:-

"36. We have carefully considered the rival submissions. We found that this issue is covered by aforementioned decision of Tribunal for A.Y. 99-00 in assessee's own case. The relevant portion of order is reproduced below: -

"The next dispute in assessee's appeal for A.Y. 99-00 relates to the claim of weighted deduction u/s 35(2AB) on the capital expenditure incurred by the assessee in respect of in-house R&D Center which is duly approved by the Govt. of India.

The assessee is a pharmaceutical company and regularly carries on in-house and research and development activity relating to its business at the facilities approved by the department of Science & Industrial Research, Govt. of India, u/s 35(2AB) of the Act. In the computation of the total income, the assessee claimed the entire expenditure, both of revenue and capital, as a deduction under the aforesaid section. The department accepted and allowed it as business expenditure. The assessee has relied on the following authorities in support of its claim for weighted deduction in respect of these expenses:

- 1. CIT Vs. SmithKline & French (Ltd.) 77 Taxman 153 (kar.) (SLP*
- 2. Vijay Seeds Pvt. Ltd. Vs. ACIT 79 ITD 233 (Pune)*
- 3. Claris Life Sciences Ltd. Vs. ACIT 112 ITD 307 (Ahd.)*
- 4. SmithKline Beecham Consumer Healthcare Ltd.
(formerly known as HMM Ltd.) Vs. IAC 1089/Chd./87 (A.Y. 1983-84).*

The Id. DR, on the other hand, vehemently supported the impugned order.

We have gone through the records. The expenditure has been incurred by the assessee on vehicles, computers and other assets, provided to its employees working at the approved research facilities and directly engaged in the research and development activities. The AO, it may be pointed out, did not accept the claim of the assessee in respect of weighted deduction, without any discussion in his order. There is no dispute that the expenditure in question was incurred by the assessee in respect of research & development facilities which have been duly approved by the prescribed authority u/s 35(2AB). Therefore, the assessee is clearly entitled for weighted deduction. It was also reported to us at the time of hearing that the CIT(A) directed weighted deduction u/s 35(2AB) while dealing with the claim of the assessee for A.Y. 01-02 in respect of similar expenses. There is no reason to deny the same in the year in question. Accordingly, we

direct the AO to allow the weighted deduction in respect of these expenses u/s 35(2AB) of the Act."

8.1 Respectfully following the precedent, we uphold the order of the Ld. Commissioner of Income Tax (Appeals) and decide the issue in favour of the assessee."

13. In view of the above factual position and bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) on this point, and decline to interfere in the matter.

14. Ground no.2 is thus dismissed

15. In the ground no.3, the Assessing officer has raised the following grievance :-

"That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.35,00,000/- and Rs.10,00,000/- in respect of contribution to Ranbaxy Community Health Care Society and Ranbaxy Science Foundation respectively."

16. Learned representative fairly agree that the learned CIT(A) has merely followed his order for the assessment year 2005-06 and a co-ordinate bench of this Tribunal has approved the said order on this point by observing as follows :-

"6. Ground No. 2 of the revenue's appeal. Identical issue was decided by the Tribunal in ITA No. 3925/Del/2002 vide order dated 31.3.2008 wherein the Tribunal has held as under:-

"6.16 In view of the above authorities, it is clear that even if there is no statutory obligation on the part of the assessee to incur the expenditure, but the expenditure has been incurred to bring good-will to the assessee or is for the purpose of promoting its business then such expenditure is to be allowed as business expenditure. In view of the above, we uphold the claim of the assessee and allow ground no.5."

6.1 Respectfully following the precedent, we uphold the order of the Ld. Commissioner of Income Tax (Appeals) and decide the issue in favour of the assessee.

17. In view of the above factual position and bearing in mind entirety of the case, we approve the conclusions arrived at by the learned CIT(A) on this point, and decline to interfere in the matter.

18. Ground no.3 is thus dismissed

19. In ground no.4, the Assessing Officer has raised the following grievance.

“That on the facts and circumstances of the case and in law, the Ld CIT(A) has erred in deleting the addition made on account of expenditure of Rs.22,07,03,117/- incurred on raising the loan amounting to USD 440 Million through Zero Coupon Foreign Currency Optional convertible Bonds as share issue expenditure.”

20. Briefly stated, relevant material facts are like this. During the course of scrutiny assessment proceedings, it was noticed that the assessee has incurred an expenditure of Rs.22,75,03,117/- on raising the borrowings of US\$ 440 millions through zero coupon convertible bonds. The Assessing Officer noted that these bonds are optionally convertible into equity and have been utilized by the assessee to subscribe to equity shares of its Dutch subsidiary company, i.e. Ranbaxy Netherlands BV, which in turn used the funds to acquire a Romanian company. On these facts, and also having noted that bond holders could get the bonds converted into equity shares within permissible window of 27.4.2006 to 18.03.2011, the Assessing officer treated the expenditure as capital expenditure for raising of share capital. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) who deleted the disallowance by observing as follows :-

“7.4 On careful examination of the matter and in view of the fact that the loan raised by the appellant through FCCB have been repaid along with redemption premium on 17.03.2011, I find that the funds remained loan and were never converted into share capital. Therefore, the decision of Supreme Court in the case of Brooke Bond (supra) wherein the share issue expenses were held as capital would not apply. Respectfully following the Hon'ble Supreme Court's decision in the case of India Cements Ltd. and Hon'ble Rajasthan High Court's decision in the case of Secure Meters Ltd (supra), the expenditure incurred on raising loan through above debentures is to be allowed as revenue expenditure. The impugned addition of Rs.22,75,03,117/- is, therefore, deleted.”

21. Aggrieved by the relief so granted by the learned CIT(A), the Assessing Officer is in appeal before me or us.

22. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

23. We find that this issue is now covered in favour of the assessee, by a series of judicial precedents including in the case of CIT vs. Secure Meters Ltd [(2010) 321 ITR 611 (Raj)], CIT vs. Havells India Ltd [(2013) 352 ITR 376 (Del)] and CIT vs Indian Railway Finance Corporation Limited [(2014) 362 ITR 548 (Del)]. In any case, the conversion into shares did not actually take place. Entire loan was repaid, along with redemption premium on 17.03.201. In view of these discussions, and in the light of the binding judicial precedents referred to earlier, the order of the learned CIT(A) does not call for any interference. We, therefore, approve the order of the learned CIT(A) on this point as well and decline to interfere in the matter.

24. Ground no.4 is thus also dismissed.

25. The appeal of the Assessing officer is thus dismissed. To sum up, while appeal of the assessee is allowed, appeal of the Assessing Officer is dismissed.. Order pronounced in the open Court on this 14th day of February, 2018.

Sd/-

Mahavir Prasad
(Judicial Member)

Ahmedabad, the 14th day of February, 2018

***bt/pbn**

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

TRUE COPY

Sd/-

Pramod Kumar
(Accountant Member)

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad