

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**I.T.A. No. 1666/HYD/2017**

Assessment Year: 2012-13

Dy. Commissioner of  
Income Tax,  
Circle-16(2),  
HYDERABAD

Vs M/s. Mylan Laboratories  
Limited,  
(Being the amalgamated  
company of Astrix  
Laboratories Limited),  
HYDERABAD

**[PAN: AADCM3491M]**

**(Appellant)**

**(Respondent)**

For Revenue : Smt. N. Swapna, DR  
For Assessee : Shri K.A. Sai Prasad, AR

Date of Hearing : 08-03-2018  
Date of Pronouncement : 16-03-2018

**ORDER**

**PER S. RIFAUR RAHMAN, A.M. :**

This is an appeal by Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Hyderabad, dated 28-07-2017, for the AY. 2012-13.

2. Brief facts of the case are that assessee, Astrix Laboratories Limited (now merged with Mylan Laboratories Ltd w.e.f. 01-04-2014) was engaged in the business of manufacture of Pharmaceutical Products. For the AY. 2012-13, in relation to

the previous year ended 31<sup>st</sup> March 2012, the assessee filed its return of income on 30-11-2012 declaring total income at Rs. 28,95,25,656/- under normal provisions of the Income Tax Act [Act] and Book Profit of Rs. 28,51,36,536/- u/s.115JB of the Act. The said return was processed u/s.143(1) of the Act. Thereafter, the case was selected for scrutiny and notices u/s. 143(2) & 142(1) of the Act were issued.

3. Since the assessee transacted with Associated Enterprises (AE) as defined in Section 92A of the Act, the case was referred to Transfer Pricing Officer (TPO), who issued Transfer Pricing Order dated 30-01-2016 by making a NIL adjustment u/s. 92CA of the Act. The AO framed assessment order u/s 143(3) r.w.s. 92CA(3) of the Act dated 24-03-2016 (received by the assessee on 31-03-2016) taking into account the above Transfer Pricing Order. The AO vide his order determined the total income at Rs. 34,41,99,459/- under normal computation and at Rs. 28,51,36,536/- u/s. 115JB. The AO worked out the assessable income at Rs. 34,41,99,459/- and Income tax including surcharge & education cess at Rs 11,16,75,515/- and after adjusting taxes already paid and levying interests u/s. 234B & 234C the net tax demand was worked out to Rs. 2,69,68,087/-.

4. Aggrieved by the said order, assessee preferred an appeal u/s. 246A of the Act before the Ld.CIT(A). Basing on the facts of the case, Ld.CIT(A) partly allowed the appeal. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before us with the following grounds:

“1. The CIT(A) erred in deleting the disallowance of depreciation of Rs. 5,46,73,799/- on technical know-how and drug master files.

2. The CIT(A) erred in ignoring the fact that Revenue’s appeal on identical issue in assessee’s own case for AY. 2009-10 is pending before Hon’ble High Court”.

Ground No. 3 is general in nature.

5. Considered the rival contentions and material on record. It is a fact that AO has disallowed the depreciation of Rs. 5,46,73,799/- claimed by assessee on intangible assets involving technical know-how and Drug Master Files (DMF). Assessee was claiming the depreciation over the years and consistently AO has disallowed the depreciation for AY. 2006-07. Even during this assessment year, the same stand was followed. However, we noticed that the Co-ordinate Bench has allowed the claim of the assessee in the previous assessment years. AO has disallowed the depreciation during the A.Y. before us merely because it has not reached finality. By respectfully following the decision of the Co-ordinate Bench, we are inclined to uphold the order of CIT(A). Therefore, appeal of the Revenue is dismissed.

*Order pronounced in the open court on 16<sup>th</sup> March, 2018*

Sd/-

**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

Hyderabad, Dated 16<sup>th</sup> March, 2018

TNMM

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

*Copy to :*

*1. The Dy. Commissioner of Income Tax, Circle-16(2), Hyderabad.*

*2. M/s. Mylan Laboratories Limited (Being the amalgamated company of Astrix Laboratories Limited), Plot No. 564/A/22, Road No. 92, Jubilee Hills, Hyderabad.*

*3. CIT(Appeals)-4, Hyderabad.*

*4. Pr.CIT-4, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*