

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6386/MUM/2016
Assessment Year: 2011-12**

DCIT-1(2)(2),
R. No. 535, 5th floor,
Aayakar Bhavan, M.K.
Road,
Mumbai-400020.

Appellant

Vs. M/s Mahyco Monsanto
Biotech (India) Ltd.
5th floor, Ahura Centre
96, Mahakali Caves Road
Andheri (E)
Mumbai-400093
PAN No. AABCM0176B

Respondent

Revenue by : Ms. Arju Garodia, DR
Assessee by : Mr. Kirit Kamdar, AR

Date of Hearing : 15/03/2018
Date of pronouncement : 18/04/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143 (3) of the Income Tax Act 1961, (the 'Act').

2. The ground raised by the Revenue in this appeal reads as under:
Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Rs.3,51,21,965/- made by the Assessing Officer u/s 40(a)(ia) when it has been clearly demonstrated that

the so called reimbursements were actually payments on contractual nature as per agreements in an organized manner being made every year and not subjecting to such payments to above provisions would render them redundant.

3. Briefly stated, the facts of the case are that the audit report (Note 'G' of Schedule 12) mentions that Rs.3,51,21,965/- under various heads were reimbursed to group companies for expenses pertaining to employees and facilities in accordance with agreements on allocation of expenses to the company. In response to a query raised by the Assessing Officer (AO), the assessee submitted vide letter dated 27.11.2013 that the following amounts were reimbursed to group companies.

a)	Monsanto Holdings Pvt. Ltd.	Rs.2,21,81,813/-
b)	Monsanto India Ltd.	Rs.1,29,40,152/-
	Total	Rs.3,51,21,965/-

The AO held that the assessee is liable to make tax deduction at source (TDS) u/s 192C and further, if there is no deduction of the same or after deduction, there is no payment of the same to the government account, then the same is disallowable u/s 40(a)(ia). Thus the AO made a disallowance of the above reimbursement of Rs.3,51,21,965/- u/s 40(a)(ia).

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) followed the order of the Tribunal for AY 2009-10 in the case of the assessee and deleted the above disallowance of Rs.3,51,21,965/-.

5. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel of the assessee relies on the order of the Ld. CIT(A) and also the order of the ITAT in the case of the assessee for the AY 2008-09 and AY 2009-10.

6. We have heard the rival submissions and perused the relevant materials on record. The AO has not disputed the fact that Rs.3,51,21,965/- were reimbursed by the assessee to group companies. A similar issue arose before the ITAT 'B' Bench Mumbai for AY 2008-09 (ITA No. 5842/Mum/2012) and for AY 2009-10 (ITA No. 1842/Mum/2013) in the case of the assessee. The Tribunal in AY 2009-10 extracted the following para from AY 2008-09 and dismissed the appeal of the Revenue:

“We have carefully considered the rival submissions in the light of material placed before us. We have carefully gone through the assessment order. The AO did not dispute the fact that the impugned amount was in the nature of reimbursement expenses on cost to cost basis. If it is so, according to the ratio of the decision rendered by Co-ordinate Bench in the case of ACIT v. J.B. Boda Surveyors Pvt. Ltd. (supra), it has to be held that the disallowance cannot be made as it has not been shown or established that aforementioned payments were made by the assessee to the aforementioned group concerns against any contract work carried out by them for assessee. In the case of reimbursement of expenses, the expenditure incurred is related to the person who has not made the original payment. The payment of expenditure is made by “X” party on behalf of “Y” party and later on the same is reimbursed to “X” party by “Y” party, the expenditure is pertaining to “Y” party and not pertaining to “X” party. Therefore, applying the ratio laid in the case of ACIT v. Crowe Boda & Co. Pvt. Ltd. in ITA No. 4251/Mum/2009 vide order dated

30.03.2010, relied upon in the case of ACIT v. J.B. Boda Surveyors Pvt. Ltd., the issue is decided in favour of the assessee. The relevant observations have already been reproduced above. In view of the above decision, Ground No. 1 of the assessee is allowed.”

6.1 Facts being identical, we follow the above order of the Co-ordinate Bench and uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed is dismissed.

Order pronounced in the open Court on 18/04/2018

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/04/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai