

IN THE INCOME TAX APPELLATE TRIBUNAL  
"I" Bench, Mumbai  
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)  
I.T.A. No. 5828/Mum/2016 (Assessment Year 2006-07)

DCIT, CC-7(1) Room No. 653 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	Maneesh Pharmaceuticals Pvt. Ltd. 2 <sup>nd</sup> Flr, Block No. 21/24 Kalpataru Court, Dr. Chotiram Gidwani Marg Chembur, Mumbai-400074. PAN :AAEFR8176J
(Appellant)		(Respondent)

Assessee by	Shri Kiran Kapadia
Department by	Ms. Sunita Billa
Date of Hearing	2.5.2018
Date of Pronouncement	2.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 15.7.2016 passed by the learned CIT(A)-49, Mumbai and it relates to A.Y. 2006-07. The Revenue is aggrieved by the decision of the learned CIT(A) in holding that the addition made by the Assessing Officer by reducing quantum of deduction eligible u/s. 10B of the Act in the assessment proceedings completed u/s. 153A of the Act is not valid.

2. We have heard the parties and perused the record. The Revenue carried search and seizure operation u/s. 132(1) of the Act in the hands of the assessee on 29.8.2011. Consequent thereto, present assessment was completed by the Assessing Officer u/s. 143(3) read with section 153A of the Act. While completing the assessment, the Assessing Officer besides making the additions which were originally made in the regular assessment proceedings, also added sum of ₹ 7.89 lakhs relating to sale of scrap and reduced the quantum of deduction allowed u/s. 10B of the Act from ₹ 17.50 crores to ₹ 8.95 crores. The said reduction in quantum of deduction allowable

u/s. 10B of the Act was made by the Assessing Officer on account of re-working of deduction by adopting different method of allocation of expenditure between different units of the assessee. Before the learned CIT(A), assessee contended that there was no incriminating material supporting the case of the Assessing Officer for reallocating expenditure for the purpose of computing deduction allowable u/s. 10B of the Act. The learned CIT(A), by following the decision of the Special Bench in the case of All Cargo Global Logistic Ltd. (137 ITD 287), which has since been affirmed by Hon'ble High Court of Bombay in the name of CIT Vs. Continental Warehousing Corporation (374 ITR 645), set aside the addition made by the Assessing Officer. The learned CIT(A), however, confirmed the addition relating to sale of scarp. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the addition relating to deduction allowed u/s. 10B of the Act on the reasoning that the Revenue has not accepted the order passed by Hon'ble Bombay High Court in the case of All Cargo Global Logistic Ltd. (supra) and has filed Special Leave Petition before Hon'ble Supreme Court.

3. Learned DR submitted that decision rendered by Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (All Cargo Logistic Ltd.) (supra) is not applicable to the facts of the present case. Inviting our attention to paragraph 53 of the order passed by Hon'ble Bombay High Court, learned DR submitted that the Hon'ble High Court has held that if the books of account or other documents had not been produced in the course of original assessment proceedings and found in the course of search, then such books of account or other documents have to be taken into account while making assessment or reassessment u/s. 153A of the Act. The Learned DR submitted that the original assessment order passed by the Assessing Officer nowhere mentions about production of books of account by the assessee. Accordingly, learned DR submitted that books of account were examined for the first time during 153A proceedings only and hence the Assessing Officer was justified in reducing the quantum of deduction allowable u/s. 10B of the Act by reallocating expenses between different units of the assessee.

4. Learned AR on the contrary, submitted that original assessment u/s. 143(3) of the Act was completed by the Assessing Officer after examining books of account, which is evidenced by the fact that the Assessing Officer has made disallowances under various head of expenditure claimed by the assessee. Further, the assessee had initially claimed deduction u/s. 10B of the Act to the tune of ₹ 19 crores and the Assessing Officer has reduced sum of ₹ 17.50 crores while completing assessment. All these additions and reduction could not have been done by the Assessing Officer without examining books of account. Accordingly, learned AR submitted that the Revenue was not justified in contending that books of account were not produced before the Assessing Officer during the course of original assessment proceedings. Learned AR further submitted that the Assessing Officer has reduced quantum of deduction allowable u/s. 10B of the Act only on account of change of opinion and the Revenue did not unearth any incriminating material supporting the case of the Assessing Officer. Accordingly, he submitted that present assessment year, being an unabated assessment, Assessing Officer could not have made such addition without making reference to any incriminating material as held by Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (supra).

5. Having heard the rival contentions, we are of the view that there is merit in the contention of the learned AR. It is an admitted fact that the original assessment was completed by the Assessing Officer u/s. 143(3) of the Act by making various types of additions. As rightly pointed out by learned AR, Assessing Officer could not have made such additions without examining books of account; hence, we are of the view that learned DR was not justified in contending that the assessee did not produce books of account before the Assessing Officer during the course of original assessment proceedings. It is also admitted fact that the Revenue did not unearth any incriminating material relating to deduction u/s. 10B of the Act. Since the year under consideration is an unabated assessment year, the Assessing Officer could not have disturbed quantum of deduction allowed by him in the original assessment

proceedings in the absence of any incriminating material. Hence, we are of the view that the learned CIT(A) was justified in deleting the adjustment made by the Assessing Officer by following the binding decision rendered by Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (supra). Accordingly, we affirm the order passed by the learned CIT(A) on this issue.

6. In the result, appeal filed by the Revenue is dismissed.  
Order has been pronounced in the Court on 2.5.2018.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 2/5/2018

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//

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BY ORDER,

(Senior Private Secretary)  
ITAT, Mumbai