

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member
and Shri Amarjit Singh, Judicial Member**

ITA No. 1181/Mum/2017
(Assessment Year: 2012-13)

A C I T - 12(2)(2) Room No. 145, 1st Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Gharda Chemicals Ltd. 48, Ghards House, Hill Road Bandra (W), Mumbai 400050
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PAN – AAACG1255E

Appellant

Respondent

Appellant by: Shri Suman Kumar
Respondent by: Shri Stuti Ghia

Date of Hearing: 21.06.2018
Date of Pronouncement: 21.06.2018

ORDER

Per B.R. Baskaran, AM

This appeal filed by Revenue is directed against the order of the CIT(A)-20, Mumbai dated 04.11.2016 and it relates to A.Y. 2012-13.

2. Revenue is aggrieved by the decision of the learned CIT(A) in deleting the disallowance of ₹76.96 lakhs, being excess amount of depreciation claimed on intellectual property rights.

3. We have heard the parties and perused the record. The assessee was having a wholly owned subsidiary in USA by name G-USA Inc. The subsidiary company held Intellectual Property Rights (IPR) to sell Dicamba in the US market. The above said subsidiary company was dissolved on 30.09.2004. Before dissolution, the subsidiary company had re-valued its the IPR from ₹44.92 crores to ₹67.99 crores. On liquidation of the subsidiary company, the assessee herein took over all the assets and liabilities at the book value. Accordingly the value of IPR came to be recorded in the books of account under revised value. The assessee

claimed depreciation on the IPR on the revised value. During the year under consideration, the AO disallowed depreciation claimed on the amount enhanced to IPR value (difference between the revised value and old book value).

4. At this juncture, it is necessary to discuss about the events that took place in AY 2005-06 with regard to the IPR, since the IPR was acquired by the assessee in that year. In AY 2005-06, the issue relating to purchase of IPR was referred by the AO to TPO. The TPO made adjustment of IPR value by reducing it by Rs.23.06 crores, i.e, the difference between the book value of ₹44.92 crores and revised value of ₹67.99 crores. He also made corresponding adjustment in depreciation claim by reducing the amount of depreciation relatable to the adjustment of ₹23.06 crores made by him on the value of IPR. As observed earlier, the AO has disallowed the claim of depreciation relating to ₹23.06 crores during the year under consideration.

5. The assessee had challenged the adjustment made to IPR value and the disallowance of depreciation by filing appeal before Ld CIT(A) in AY 2005-06. The first appellate authority set aside the adjustment made to the IPR value for the reasons stated in his order. During the year under consideration, the Ld CIT(A) noted this fact and also noted that the amount of depreciation relating to the enhanced amount, which was disallowed by the AO in 2005-06 to 2011-12, has been deleted by the respective learned CIT(A). Accordingly, by following orders the learned CIT(A) passed for earlier years, the Ld CIT(A) deleted the disallowance of depreciation made by the AO during the year under consideration. The revenue is aggrieved by the said decision of the learned CIT(A).

6. At the time of hearing the learned A.R. submitted the order passed by the learned CIT(A) in A.Y. 2005-06 was challenged by the Revenue before the ITAT and the ITAT, vide its order dated 29.04.2016 passed in ITA No. 8758/Mum/2010 (relating to A.Y. 2005-06), has upheld the view taken by the learned CIT(A). Accordingly the learned A.R. submitted that

the adjustment of ₹23.06 crores made by the TPO in A.Y. 2005-06 has been deleted by the learned CIT(A) as well as the ITAT. Accordingly the learned A.R. submitted that the depreciation disallowed by the AO relates to the above said amount of ₹23.06 crores and since the very basis on which this disallowance was made no longer exists, the AO could not have disallowed the depreciation. He further submitted that the order passed by the learned CIT(A) in assessment years 2006-07 to 2011-12 has also been confirmed by the Tribunal for the reasons cited above. Accordingly the learned A.R. submitted that the order passed by the learned CIT(A) on this issue does not call for any interference.

7. The learned D.R., on the contrary, supported the order passed by the AO.

8. Having heard the rival submissions we are of the view that the order passed by the learned CIT(A) on the issue of disallowance of depreciation does not call for any interference, since the disallowance was related to the adjustment of ₹23.06 crores made by the TPO in A.Y. 2005-06, which has already been deleted by the Ld CIT(A) and also by the Tribunal. Accordingly there is merit in the contentions of the assessee that the very basis on which depreciation was disallowed no longer exists. Hence the impugned disallowance of depreciation does not have independent legs to stand on its own. Accordingly we confirm the order passed by the learned CIT(A) on this issue.

9. In the result, the appeal filed by Revenue is dismissed.

Order pronounced in the open court on 21st June, 2018.

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai, Dated: 21st June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -20, Mumbai*
4. *The CIT - 12, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.