



IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.1011/Mum./2016
(Assessment Year :2011-12)

GIA India Laboratory Pvt. Ltd.
10th Floor, Trade Centre
Bandra Kurla Complex
Bandra (E), Mumbai 400 051
PAN – AACCG9457G

..... Appellant

v/s

Dy. Commissioner of Income Tax
Range-14(1)(1), Mumbai

..... Respondent

ITA no.1915/Mum./2016
(Assessment Year : 2011-12)

Dy. Commissioner of Income Tax
Range-14(1)(1), Mumbai

..... Appellant

v/s

GIA India Laboratory Pvt. Ltd.
10th Floor, Trade Centre
Bandra Kurla Complex
Bandra (E), Mumbai 400 051
PAN – AACCG9457G

..... Respondent

Assessee by : Shri J.D. Mistry, a/w
Ms. Urvi Mehra
Revenue by : Shri Anand Mohan

Date of Hearing – 22.01.2019

Date of Order – 30.01.2019

ORDER**PER SAKTIJIT DEY, J.M.**

Aforesaid cross appeals are directed against assessment order dated 28th January 2016, passed under section 143(3) r/w 144C(13) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2011-12 in pursuance to the directions of the Dispute Resolution Panel-1 (DRP), Mumbai.

2. Ground no.1 of assessee's appeal and the only ground in Department's appeal pertain to transfer pricing adjustment made on account of payment of royalty and availing of management services respectively.

3. At the outset, Shri J.D. Mistry, learned Sr. Counsel, appearing for the assessee submitted, both the issues raised by the assessee as well as Department in relation to the transfer pricing adjustment are now covered by the Advance Pricing Agreement dated 7th May 2018, between the assessee and the Central Board of Direct Taxes. Therefore, he submitted, ground no.1, raised by the assessee is not to be pressed. He further submitted, since, the ground raised by the Department is also covered by the Advance Pricing Agreement, Department's appeal also becomes infructuous. In this context, he filed letter dated 10th October 2018 from the assessee along with extracts of the Advance Pricing Agreement concerning the transfer

pricing adjustment issues raised by both the assessee and the Department.

4. Shri Anand Mohan, the learned Departmental Representative agreed with the aforesaid submissions of learned Sr. Counsel.

5. We have considered rival submissions and perused material on record. As could be seen, in ground no.1, the assessee has challenged transfer pricing adjustment made of ₹ 58,91,32,017, on account of payment of royalty to the AE. Notably, this issue has been resolved by the assessee and the Department by the Advance Pricing Agreement dated 7th May 2018. Similarly, the only issue raised by the Department in its appeal relates to transfer pricing adjustment made on account of payment made by the assessee towards availing of management services. This dispute between the parties has also been resolved by the Advance Pricing Agreement referred to above. That being the case, there is no need to delve further into these issues. Accordingly, ground no.1, of assessee's appeal and only ground in Department's appeal having become infructuous are dismissed.

6. In ground no.2, the assessee has challenged disallowance of depreciation on market research expenses.

7. Brief facts are, the assessee company is engaged in the business of providing services relating to grading of diamonds, coloured stones,

gems, pearls and other precious stones. In the return of income filed for the assessment year 2009–10, the assessee had claimed deduction of market research expenses of ₹ 23,50,000. While completing the assessment for assessment year 2009–10, the Assessing Officer rejected assessee's claim by holding the aforesaid expense as capital in nature. However, he allowed depreciation @ 25%. While proposing the draft assessment order for the impugned assessment year, the Assessing Officer failed to allow depreciation on the opening written down value (WDV) of the market research expenses disallowed in assessment year 2009–10. When the assessee brought the aforesaid fact to the notice of the DRP, the DRP directed the Assessing Officer to allow depreciation as it was allowed in assessment year 2009–10 and 2010–11. However, in the final assessment order, the Assessing Officer failed to implement the aforesaid direction of the DRP.

8. The learned Sr. Counsel for the assessee submitted, while deciding identical issue in assessee's own case for assessment year 2010–11 in IT(TP)A no.1558/Mum./2015 and C.O. no.112/Mum./2015, dated 9th November 2018, the Tribunal has directed the Assessing Officer to allow depreciation.

9. The learned Departmental Representative fairly conceded that as per the direction of the Tribunal and the DRP, the claim of depreciation has to be allowed.

10. We have considered rival submissions and perused material on record. From the facts on record, it is very much clear that the Assessing Officer himself has allowed assessee's claim of depreciation on market research expenses in assessment year 2009-10. The Tribunal while deciding assessee's cross objection in assessment year 2010-11, as referred to above, had also directed the Assessing Officer to allow claim of depreciation. In fact, while disposing off assessee's objection in the impugned assessment year, the DRP has also directed the Assessing Officer to allow assessee's claim of depreciation. In our view, the Assessing Officer while passing the final assessment order should have implemented the aforesaid direction of the DRP. Accordingly, we direct the Assessing Officer to allow depreciation on the opening WDV of the market research expenditure.

11. In ground no.3, the assessee has sought a direction to the Assessing Officer to grant credit for Minimum Alternate Tax (MAT) paid in earlier years under section 115JB of the Income Tax Act, 1961 (for short "*the Act*") amounting to ₹ 6,21,29,505.

12. We have considered rival submissions and perused material on record. As per the provisions of section 115JAA of the Act, credit in respect of tax paid under section 115JB of the Act, has to be allowed to the assessee in terms with the provisions contained under section

115JAA of the Act. It is the claim of the assessee that since it has paid tax under section 115JB of the Act for the earlier years, credit for which has to be allowed in the impugned assessment year. Considering the above, we direct the Assessing Officer to allow credit under section 115JAA of the Act for the tax paid under section 115JB of the Act in the earlier years subject to the conditions provided under the said provision.

13. In ground no.4, the assessee has raised the issue of short grant of TDS amounting to ₹ 26,39,57,919.

14. Having considered rival submissions, we direct the Assessing Officer to verify assessee's claim and grant credit for the actual TDS. Ground raised is allowed for statistical purposes.

15. In the result, assessee's appeal is partly allowed and Revenue's appeal is dismissed.

Order pronounced in the open Court on 30.01.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.01.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai