

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH**

**(BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 238 & 259/AHD/2012
(Assessment Year: 2006-07)**

The ACIT, Circle-8, Ahmedabad	V/S	M/s. Torrent Pharmaceuticals Ltd. Torrent House, Off. Ashram Road, Ahmedabad-380009
M/s. Torrent Pharmaceuticals Ltd. Torrent House, Off. Ashram Road, Ahmedabad-380009	V/S	The JCIT, Circle-8, Ahmedabad
(Appellant)		(Respondent)

PAN: AAAC 5456A

**Appellant by : Shri Mudit Nagpal, Sr. D.R.
Respondent by: Shri S.N. Soparkar & Urvashi Shodhan**

(आदेश)/ORDER

Date of hearing : 01 -11-2018
Date of Pronouncement : 15-01-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two cross appeals have been filed by the Revenue and the Assessee against each other and Revenue has taken following grounds of appeal:

1). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in directing to allow depreciation @60% on the equipments connected to V-SAT (i.e. Transformer, UPS etc.).*

2). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in restricting the disallowance of administrative expenses u/s.14A of the IT. Act to Rs.5,00,000/- out of Rs.56,21,000/- made by the A.O.*

3). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the disallowance amounting to Rs.39,08,141/-made by the Assessing Officer on account of payment made in respect of provision for Employee Long-term Compensation Plan (ELTCP).*

4). *The Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the disallowance of Rs. 12,06,824/- made by the Assessing Officer on account of garden expenses.*

5). *The Ld. Commissioner of Income-tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the disallowance of weighted deduction u/s.35(2AB) of the I.T. Act in respect of recurring expenses related to building and other than building (Municipal taxes and salary to Dr. C. Dutt).*

6). *The Ld. Commissioner of Income-tax (Appeals)-XIV, Ahmedabad has erred in law and on facts in directing to capitalize the interest for borrowings made for R & D assets and allowing depreciation on motor car.*

7). *On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad ought to have upheld the order of the Assessing Officer.*

8). *It is therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeals)-XIV, Ahmedabad may be set-aside and that of the order of the Assessing Officer be restored.*

2. Briefly stated the facts of the case are that the assessee is engaged in a manufacturing of pharmaceuticals and assessee company filed its return of income declaring a total income of Rs. 10.80 Crores on 31/12/2006. However, tax was paid on the book profits. The ld. A.O. has assessed a total income at Rs. 15.23 Crores with no adjustment being made to the returned book profits.

While finalizing the assessment, the Ld. Assessing Officer has made the following adjustments/disallowances to the returned income:

- (i) Disallowance of depreciation @ 60% on equipments connected to V-SAT of Rs. 4,27,545/-.
- (ii) Disallowance u/s. 14A in the nature of administrative and interest expenditure of Rs. 56,21,000/-.
- (iii) Disallowance of Rs. 39,08,141/- paid in respect of provision for Employee Long Term Compensation Plan.
- (iv) Disallowance of Rs. 12,06,824/- for garden expenses.
- (v) Disallowance of weighted deduction claimed u/s. 35(2AB) of the Act on recurring expenses of Rs. 60.85 lacs related to building, municipal taxes and salary to Mr. C. Dutt.

3. And against the disallowances/additions, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.
4. Now Revenue is before us by way of an appeal.
5. First we would like to discuss the ground related to depreciation @ 60% on equipments connected to V-SAT.
6. Ld. A.O. has discussed this issue at page no. 2 & 3 in Para 6 and ld. CIT(A) has discussed at page no. 3 to 9 in Para no. 4.
7. The assessee's contention for claim of depreciation @ 60% in respect of V-SAT is that the functioning of a V-sat. Very small aperture terminal consists of two parts namely a transceiver that is placed out doors in a direct line of site to

a Satellite and a device that is place indoors to interface the transceiver with the end users connection device, such as a computer. The transceiver receives or sends the signals from ground station computer that acts as a hub for the system. Each and user is inter-connected with the hub station viz. Satellite forming a star apology and stated that same is entitled for depreciation @ 60%.

8. In support of its contention, assessee also cited an order of the Delhi High Court [2013] 358 ITR 47 (Del.) where in it is held that computer accessories and peripherals such as printers, scanners and server form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are part of the computer system, they are entitled to depreciation at the higher rate of 60%.
9. As we can see, V-SAT cannot function in isolation without the help of computer. Therefore, as per aforesaid Delhi High Court judgment and in our considered opinion, assessee is entitled for 60% depreciation. Thus, this ground of revenue is dismissed.
10. Now we come to ground no. 2 that ld. CIT(A) has erred in law and on facts in restricting the disallowance of administrative expenses u/s. 14A of Income Tax Act to Rs. 5,00,000/- out of Rs. 56,21,000/- made by the A.O.
11. Ld. A.O. has discussed this issue at page no. 10 to 17 in Para 9 and ld. CIT(A) has discussed at page no.11 to 21 in Para no. 6.
12. In this case, assessee had earned tax free dividend income of Rs. 33.81 lakhs during the year under consideration. And assessee had made investment in

Mutual funds, NSC, Investments in foreign subsidiaries and investments in the form of contribution to Gujarat Venture Capital Fund to the tune of Rs. 14695 were made and therefore is having share capital and reserve and surplus as on 31/03/2006 Rs. 38252.40 lakhs.

13. As assessee is having own funds available with the company were substantially more than the investment. And in support of its contention, assessee relied an order of Co-ordinate Bench in the case of ACIT vs. Hipolin Ltd. in ITA No. 4259/Ahd/2007 wherein it has been held that it has to be first presumed that the investment were made out of interest free funds available with the assessee.
14. Respectfully following the same, ld. CIT(A) has rightly restricted Rs. 5,00,000/- as administrative expenses u/s. 14A and same does not require any kind of interference at our end. Thus, we dismiss this ground of appeal of the revenue.
15. Now we come to ground no. 3 relating to deleting the disallowance of Rs. 39,08,141/- paid in respect of provision for Employee Long-term Compensation Plan.
16. Ld. A.O. has discussed this issue at page no. 17 to 19 in Para 11 and ld. CIT(A) has discussed at page no.21 to 29 in Para no. 7.
17. During the year under consideration, assessee has claimed Rs. 39,08,141/- in respect of provision made for Employee Long-term Compensation Plan and same provision was made in assessment year 2007-08 in respect of assessment year 2006-07 for the said amount relating to 2005-06. When lower authorities issued the notice to the assessee in reply, assessee stated that as the scheme of

providing compensation to the employees was framed in the F.Y. 2006-07 w.e.f. F.Y. 2005-06, the provision for such expense was not made in the books of accounts. However, as the said provision pertained to the services rendered by the employees for the F.Y. 2005-06, therefore, assessee had claimed such expenses while computing taxable income under Income Tax Act.

18. As we can see, ld. A.O. had disallowed the provision for leave encashment as no payment has been made against the said provision during the year. In the case of Bharat Earth Movers Hon'ble Supreme Court has held if a liability has been ascertained with a reasonable certainty and the actual quantification is not material to claim the expenditure.
19. Therefore, respectfully following the aforesaid Hon'ble Supreme Court judgment and in our considered opinion, the ld. CIT(A) has rightly granted relief to the assessee. Therefore, this ground of appeal is dismissed.
20. Now we come to ground no. 4 with regard to garden expenses to the tune of Rs. 12,06,824/-.
21. Ld. A.O. has discussed this issue at page no. 3 & 4 in Para 7 and ld. CIT(A) has discussed at page no.29 & 30 in Para no. 8.
22. In this case, ld. CIT(A) has followed assessment year 2004-05 in favour of assessee and same is part of paper book Page no. 145/146 in Para 49 & 49 of paper book.

23. And against the order of assessment year 2004-05, there was no appeal by the Revenue therefore same got the finality. In our considered opinion, ld. CIT(A) has rightly granted relief to the assessee. Thus, we dismiss this ground of revenue.
24. Now we come to ground relating to deleting the disallowance of weighted deduction u/s. 35(2AB) of the Income Tax Act of recurring expenses related to building municipal taxes and salary to Mr. C. Dutt.
25. Ld. A.O. has discussed this issue at page no. 4 to 10 in Para 8 and ld. CIT(A) has discussed at page no.30 to 41 in Para no. 9.
26. In this case, ld. CIT(A) has followed assessment year 2005-06 in ITA No. 1869/Ahd/2009 and same is part of paper book at page no. 195/196 in Para no. 6 to 8 of the paper book. Therefore, we do not want to interfere in the order passed by the ld. CIT(A). Thus, this ground of appeal of the revenue is dismissed.
27. Now we come to ground related to capitalize interest on borrowings made for R&D assets and allowing depreciation on motor car.
28. Ld. CIT(A) has discussed at page no. 41 in Para no. 10. As we can see, in assessment year 2005-06, predecessor of the ld. CIT(A) allowed the claim regarding depreciation in respect of motor car and capitalization of interest has been allowed. As ld. CIT(A) has followed earlier year and there is no appeal by the Revenue against the said order. Therefore, we do not want to interfere in the said order. Thus, this ground is dismissed.

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

30. ITA No. 259/Ahd/2012 Assessee's appeal. The Assessee has taken following grounds of appeal.

1. On the facts and in the circumstances of the case, CIT(A) erred in not upholding the Assessee's claim for deduction in a sum of Rs. 268.695 lacs being 150% weighted deduction under Section 35(2AB) in respect of capital expenditure of motor cars and interest Rs. 179.13 lacs.

2 On the facts and in the circumstances of the case, CIT(A) erred in upholding a disallowance to the extent of Rs. 5 lacs out of the disallowance purportedly made by invoking the provisions of Section 14A of the Act.

3. The appellant craves leave to add to, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal

31. So far first ground is for claimed weighted deduction, Ld. A.O. has discussed this issue at page no. 4-10 in Para 8 and ld. CIT(A) has discussed this issue at page no. 30-41 in Para no. 9.

32. As we can see in connected appeal filed by the Revenue, we have held that ld. CIT(A) has passed detailed and reasoned order and in assessee's own case for A.Y. 2005-06 in ITA Nos. 1869 & 1881/Ahd/2009 similar ground has decided against the assessee by the ITAT. In parity with the same, we dismiss this ground of appeal of the assessee.

33. Now we come to second ground regarding confirming disallowance to the extent of Rs. 5,00,000/- u/s. 14A of the Act, we can see same is covered in favour of assessee's own case for A.Y. 2005-06 by the Co-ordinate Bench in ITA No. 1881/Ahd/2009 with following observation:

“We find that case law cited by Ld. AR in the matter of Catholic Syrian Bank Ltd.& Ors. (supra), wherein the Hon'ble Kerala High Court has held that so far as disallowance of administrative expense is concerned, there is no precious formula or proportionate disallowance, no disallowance called for, for proportionate administrative cost, attributable to earning of tax free income until Rule 8D of the IT. Rule, 1962 came into force. It is further held that the proportionate disallowance u/s. 14A should be limited to only interest liability and not overhead or administrative expenditure, which should be considered for disallowance under Rule 8D of the IT. Rule, 1962 from 2007-08. Respectfully following the ratio in the case of Catholic Syrian Bank Ltd.& Ors. (supra) we hereby delete the addition made on account of administrative expenses. This ground of assessee's appeal is allowed.”

34. In view of the above, this ground of appeal is allowed.

35. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on	15 - 01- 2019
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Sd/-

(PRAMOD KUMAR)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 15/01/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad