



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

IT(TP)A no.6431, 6432/Mum./2016  
(Assessment Year : 2012-13, 2011-12)

Asstt. Commissioner of Income Tax  
(Large Taxpayer Unit)-2, Mumbai

..... Appellant

v/s

M/s. Glemark Generics Ltd.  
Glenmark House, HDO Corporate Bldg.  
Wing-A, B.D. Sawant Marg  
Chakala, Opp. Western Express  
Highway, Andheri (East)  
Mumbai 400 099  
PAN - AACCG9820D

..... Respondent

Revenue by : Shri Anand Mohan  
Assessee by : Shri Anuj Kisnadwala

Date of Hearing - 25.04.2019

Date of Order - 30.04.2019

**ORDER**

Aforesaid appeals have been filed by the Revenue challenging two separate orders passed by the learned Commissioner (Appeals)-56, Mumbai, for the assessment years 2012-13 and 2011-12.

2. The first common issue raised in both the appeals relate to allowability of deduction claimed under section 80IB of the Income-tax Act, 1961 (for short "*the Act*").

3. Brief facts common in both the assessment years are, the assessee company is engaged in the business of manufacturing and selling of pharmaceutical products and R&D activity. For the assessment year under dispute, the assessee filed its returns of income under normal provisions after claiming deduction under section 80IB of the Act. However, the assessee declared book profit under section 115JB of the Act. In the course of assessment proceedings, the Assessing Officer while verifying assessee's claim of deduction under section 80IB of the Act for Assessment Year 2011-12 in respect of the Goa Unit, noticed that the assessee has included the income from scrap sale amounting to ₹ 20,67,157, as income derived from the industrial undertaking for claiming deduction. Similarly, in assessment year 2012-13, the assessee had included scrap sale income of ₹ 36,16,303, for computing deduction under section 80IB of the Act. The Assessing Officer being of the view that income from scrap sale cannot be considered to be a part of the profit and gains from the business, disallowed assessee's claim of deduction under section 80IB of the Act in respect of such income in both the assessment years. The assessee challenged the aforesaid disallowances before the first appellate authority.

4. While considering assessee's appeals on the disputed issue, the Assessing Officer noticed that similar disallowance made by the

Assessing Officer in assessee's own case for assessment year 2009-10 was deleted by the Tribunal and following the decision of the Tribunal the issue was decided in favour of the assessee by the first appellate authority in assessment year 2010-11. Considering the above, learned Commissioner (Appeals) allowed assessee's claim of deduction under section 80IB of the Act in respect of income from scrap sales in both the assessment years.

5. The learned Departmental Representative relied upon the observations of the Assessing Officer.

6. The learned Authorised Representative submitted, the issue has been decided in favour of the assessee by the Tribunal in assessment year 2009-10 and the said decision is squarely applicable to the impugned assessment year.

7. We have considered rival submissions and perused material on record. Undisputedly, the allowability of deduction under section 80IB of the Act in respect of income generated from scrap sales arose in assessee's own case in assessment year 2009-10. The Tribunal while deciding the issue in ITA no.5515/Mum./2013, dated 5<sup>th</sup> February 2016, has allowed assessee's claim of deduction. Following the aforesaid decision of the Tribunal, learned Commissioner (Appeals) has also allowed assessee's claim of deduction under section 80IB of the

Act in respect of scrap sales in assessment year 2010–11. Facts being identical, respectfully following the decision of the Co-ordinate Bench as referred to above, we uphold the decision of the learned Commissioner (Appeals) in allowing assessee's claim of deduction under section 80IB of the Act in respect of scrap sales in both the assessment years under appeal. Grounds are dismissed.

8. The next common issue, as raised in grounds no.2 and 3 in both the appeals, relates to the determination of arm's length price of corporate guarantee fee.

9. Brief facts are, during the assessment proceedings for Assessment Year 2011–12, the Assessing Officer noticed that assessee's AE has taken a term loan from ICICI Bank U.K. PLC, Frankfurt Branch, for which the assessee has provided corporate guarantee. The Transfer Pricing Officer observed that for providing such corporate guarantee, the assessee had not charged any guarantee fee. The Transfer Pricing Officer observed, in the preceding assessment year, the assessee had charged guarantee fee of 0.5% for six days, whereas, the Transfer Pricing Officer had determined the guarantee fee @ 3%. Noticing the same, the Transfer Pricing Officer fixed the rate of of guarantee commission @ 2.25% which resulted in an adjustment of ₹ 5,67,67,990. The aforesaid adjustment proposed by the Transfer Pricing Officer was added back to the income of the

assessee in the assessment order. Similarly, for the assessment year 2012-13, the Transfer Pricing Officer computed the guarantee commission @ 1.5% resulting in an adjustment of ₹ 2,84,35,598. The assessee challenged the aforesaid additions on account of corporate guarantee fee before the first appellate authority.

10. After considering the submissions of the assessee and relying upon the decision of the Tribunal in case of assessee's holding company viz. Glenmark Pharmaceuticals Ltd. and the decision of the Hon'ble Jurisdictional High Court in DCIT v/s Everest Kento Cylinders Ltd., [2015] 378 ITR 57 (Bom.), learned Commissioner (Appeals) directed the Assessing Officer to consider the arm's length price of the corporate guarantee commission @ 0.5% per annum in both the assessment years under appeal.

11. The learned Departmental Representative relied upon the observations of the Assessing Officer.

12. The learned Authorised Representative strongly supporting the decision of the learned Commissioner (Appeals) submitted that the Hon'ble Jurisdictional High Court in CIT v/s Glenmark Pharmaceuticals Ltd., 398 ITR 439 (Bom.) following its own decision in Everest Kento Cylinders Ltd. (supra), has held that corporate guarantee fee of 0.5% is reasonable. He submitted, the aforesaid decision of the Hon'ble

Jurisdictional High Court has been upheld by the Hon'ble Supreme Court. Thus, he submitted, there is no reason to interfere with the decision of learned Commissioner (Appeals).

13. We have considered rival submissions and perused material on record. In our considered opinion, the decision of the learned Commissioner (Appeals) in restricting the arm's length price of corporate guarantee fee @ 0.5% is in consonance with the decision of the Hon'ble Jurisdictional High Court in Everest Kento Cylinders Ltd. (supra). In various other decisions also, different Benches of the Tribunal following the aforesaid decision of the Hon'ble Jurisdictional High Court have directed the Assessing Officer to determine the arm's length price of corporate guarantee commission @ 0.5%. That being the case, we uphold the decision of the learned Commissioner (Appeals) on the issue. Grounds raised are dismissed in both the appeals.

14. The learned Departmental Representative submitted that grounds no.4, 5 and 6 in both the appeals do not arise out of the order of the learned Commissioner (Appeals) and have been inadvertently raised by the Revenue.

15. In view of the aforesaid, grounds no.4, 5 and 6 in both the appeals are dismissed as not pressed.

16. In the result, appeals are dismissed.

Order pronounced in the open Court on 30.04.2019

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30.04.2019**

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