

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA Nos.2631 to 2633/PUN/2016**  
**निर्धारण वर्ष / Assessment Years : 2010-11 to 2012-13**

Aquapharm Chemicals Pvt. Ltd.,  
Khandelwal Jain & Associates,  
Alankar Cinema Building,  
1<sup>st</sup> Floor, Above United Bank,  
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAECA7014R

Vs.

The Dy. Commissioner of Income Tax,  
Circle 8, Pune

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA No.357/PUN/2017**  
**निर्धारण वर्ष / Assessment Year : 2011-12**

Aquapharm Chemicals Pvt. Ltd.,  
Khandelwal Jain & Associates,  
Alankar Cinema Building,  
1<sup>st</sup> Floor, Above United Bank,  
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAECA7014R

Vs.

The Dy. Commissioner of Income Tax,  
Circle 8, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by

: Shri R.G. Nahar

प्रत्यर्थी की ओर से / Respondent by

: Shri Sudhendu Das

सुनवाई की तारीख / <b>Date of Hearing : 10.06.2019</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.06.2019</b>
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**आदेश / ORDER****PER SUSHMA CHOWLA, JM:**

This bunch of appeals filed by same assessee are against respective orders of CIT(A)-6, Pune, dated 25.08.2016 and 05.12.2016 relating to assessment years 2010-11 to 2012-13 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to different assessment years were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First, we shall take up the appeal of assessee in assessment year 2010-11, wherein the following grounds of appeal have been raised:-

1. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the addition made of Rs.8,73,394/- on account of premium paid to LIC under group gratuity scheme is not in accordance with the provisions of the Act. The additions so made be deleted. Just in proper relief may be granted to the appellant.*
2. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that disallowance made on account of payments made of legal & professional charges of Rs.4,26,181/- to M/S SRG Consultants, LSR Associates, Bhate & Ponkshe by holding the same, as expenditure incurred to bring in existence new assets / new units is capital expenditure & the same is not in accordance with the provisions of the Act & the facts prevailing in the case. The additions so made be deleted. Just in proper relief may be granted to the appellant.*
3. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that disallowance made of Rs.2,13,529/- resulting in reduction of claim u/s 10B of interest received from MIDC & MSEB, is not in accordance with the provisions of the Act. The interest so received be treated as income eligible & qualifying for deduction u/s 10D. Just in proper relief may be granted to the appellant.*
4. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that any addition made to the computation to the total income needs to be allocated over Mahad EOU & Pirangut EOU units, which are eligible for exemption / deduction u/s 10B of the Act on proportionate basis, so as to derive the correct taxable income. Considering the provisions of the Act & facts & circumstances prevailing in the case just and proper relief be granted to the appellant on this score.*

4. The issue raised vide ground of appeal No.1 is against disallowance of ₹ 8,73,394/- i.e. premium paid to LIC group gratuity fund. The said disallowance was made on the ground that group gratuity scheme was not approved by Commissioner. However, the scheme had been approved by Commissioner vide its order dated 17.03.2017 w.e.f. 01.01.2000. Consequently, the plea of assessee before us is that the said payment is to be allowed in the hands of assessee. He also pointed out that similar issue arose in assessee's own case in assessment year 2009-10 in ITA No.240/PUN/2015, wherein while deciding cross appeals with lead order in ITA No.2099/PUN/2014, vide order dated 17.04.2017 the said issue has been decided in favour of assessee. We find merit in the plea of assessee that once the Commissioner has approved group gratuity scheme of employees of assessee, then the assessee is entitled to the deduction on account of premium paid to LIC group gratuity fund of ₹ 8,73,394/-. Hence, the ground of appeal No.1 raised by assessee is allowed.

5. Now, let us take up ground of appeal No.2 raised by assessee, which is against disallowance of professional fees paid to different persons.

6. The learned Authorized Representative for the assessee pointed out that total expenditure debited under the head was ₹ 17,83,195/- in EOU unit of assessee. The Assessing Officer had worked out the disallowance of ₹ 4,26,181/- being capital expenditure. The learned Authorized Representative for the assessee pointed out that disallowance made on account of payment to SRG Consultancy Pte Ltd. has been allowed by CIT(A) vide para 22 of his order. However, the payment made to other two concerns i.e. LSR Associates and Bhate & Ponkashe, the CIT(A) has confirmed the disallowance being capital expenditure. The learned Authorized Representative for the assessee

pointed out that payment to LSR Associates was made against registration charges for registering product before entering UK. In this regard, the learned Authorized Representative for the assessee placed reliance on the decision of Hon'ble Gujarat High Court in CIT Vs. Torrent Pharmaceuticals Ltd. (2013) 87 DTR (Guj) 54 that foreign registration charges are to be allowed as revenue expenditure.

7. The Revenue placed reliance on the orders of authorities below.

8. We find that similar issue arose before the Tribunal in assessee's own case in assessment year 2009-10 and vide para 10 the grounds of appeal raised by Revenue in respect of legal and professional charges paid to SRG Consultancy Pte Ltd. were adjudicated. The said issue of payment to SRG Consultancy Pte Ltd. has been allowed by CIT(A) in the instant assessment year and the Revenue is not in appeal.

9. Now, coming to second disallowance of payment to LSR Associates and Bhate & Ponkashe. Before going into merits of the issue, the learned Authorized Representative for the assessee pointed out that the issue becomes academic as the assessee is entitled to claim deduction under section 10B of the Act on enhanced profits i.e. after any disallowances. In this regard, he placed reliance on the decision of Mumbai Bench of Tribunal in Krupa Trading Company Vs. Addl.CIT (2017) 77 taxmann.com 177 (Mumbai-Trib.). We find merit in the alternate plea raised by assessee and allowability or its disallowance becomes academic. The deduction under section 10B of the Act merits to be allowed on the enhanced profits of business. Accordingly, we hold so and allow grounds of appeal No.2 and 4 on this plea.

10. The issue in ground of appeal No.3 raised by assessee is against assessability of interest received from MIDC and MSEB in EOU unit. The same were held as taxable in the hands of assessee; but since the aforesaid deposits are made for the purpose of carrying on business, then interest received on such deposits is business income and consequently, the assessee is eligible to claim deduction under section 10B of the Act. We find merit in the plea of assessee that interest received from MIDC and MSEB is to be assessed as business income in the hands of assessee, on which deduction under section 10B of the Act is to be allowed. The issue raised vide ground of appeal No.3 was consequential.

11. The appeal in ITA No.2633/PUN/2016 was filed against order of CIT(A), wherein he did not decide all the grounds of appeal raised by assessee. However, consequently, the CIT(A) consolidated all the issues and decided the issue after rectification application moved by assessee. The learned Authorized Representative for the assessee thus, states that appeal has also been filed against consequent order of CIT(A) in ITA No.357/PUN/2017 and the same may be adjudicated. We find merit in the plea of assessee and proceed to decide the issues raised in ITA No.357/PUN/2017 after holding that appeal in ITA No.2632/PUN/2016 is academic.

12. The ground of appeal No.1 raised by assessee is against disallowance of premium paid to LIC group gratuity at ₹ 8,80,474/-. We have already decided this issue in assessment year 2010-11 vide ground of appeal No.1 and our decision would apply *mutatis mutandis* and stands allowed.

13. The ground of appeal No.2 is against disallowance of professional fees paid and the alternate plea is the deduction under section 10B of the Act to be allowed on enhanced profits. We have also adjudicated this issue vide grounds of appeal No.2 and 4 in assessment year 2010-11 and our decision would apply *mutatis mutandis*.

14. Similarly, the issue in ground of appeal No.3 is against claim of deduction under section 10B of the Act on interest received from MIDC and MSEB and the same ground has already been decided in assessment year 2010-11 and accordingly, we direct the Assessing Officer to allow 10B deduction after including the interest on MIDC and MSEB as profits of business.

15. The last issue raised by way of ground of appeal No.4 is against invoking of provisions of section 10B(7) r.w.s. 80IA(7) of the Act, under which the deduction claimed under section 10B of the Act has been reduced by ₹ 1,68,16,143/-.

16. Brief facts relating to the issue are that the assessee was engaged in manufacture and processing of chemicals and had two Export Oriented Units i.e. EOU Unit at Mahad, Dist. Pune and EOU unit at Pirangut, Pune. The unit at Pirangut was claiming exemption under section 10B of the Act from assessment year 2005-06 and EOU at Mahad was claiming deduction from assessment year 2007-08. The learned Authorized Representative for the assessee has filed a Note Sheet and has also pointed out that both the units were independent units and separate set of books were maintained. It is also pointed out that expenditure directly identifiable to each of 10B units were booked in the respective units and common expenditure was allocated in sales

turnover ratio. This method has been followed and taken note by Assessing Officer in assessment year 2007-08 and was consistently followed from year to year. However, the Assessing Officer while completing assessment in the case of assessee had allocated employees cost and the inter unit purchases, which had resulted in curtailing the deduction claimed under section 10B of the Act. The learned Authorized Representative for the assessee again reiterated that Assessing Officer in assessment year 2007-08 vide assessment order passed under section 143(3) of the Act had not disturbed the allocation of common expenditure on sales turnover basis. The learned Authorized Representative for the assessee in this regard pointed out that Assessing Officer had compared profits of domestic unit and wherein the profits were lower when compared to 10B unit. It was further pointed out that semi processed goods were transferred from 10B unit to non 10B unit, under which sale invoices were raised and Excise duty was also charged. The learned Authorized Representative for the assessee pointed out that under Excise rules, procedure is laid down for its violation and assessee had followed due process, which had not been challenged either by Assessing Officer or CIT(A). Referring to detailed chart at page 44 of Paper Book, the learned Authorized Representative for the assessee stressed that where the method of allowance of cost had not been disturbed, then there was no merit in disturbing the same.

17. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of CIT(A).

18. We have heard the rival contentions and perused the record. The Assessing Officer during the course of assessment proceedings noted that profits shown in different units by assessee were at variance. In Mahad EOU unit gross profit was shown at 88.25%; in Pirangut EOU unit, it was 10.71% and

in Pirangut DTA unit, it was 1.04%. The Assessing Officer show caused to explain as to why the margins of profit in exempt units were more than DTA unit, which was not exempt to tax. The assessee explained that rates of raw material consumed in Pirangut DTA unit had gone up substantially in respect of Acrylic Acid and Maleic Anhydride and hence, margins of profits were lower. It was also pointed out that there is no transfer of any raw material from Mahad EOU unit and Pirangut EOU unit to Pirangut DTA unit and hence, provisions of section 10B(7) r.w.s. 80IA(8) of the Act were not attracted. Further, separate stock records were maintained at each division separately and finished products which were transferred from Mahad EOU unit to Pirangut DTA unit were at cost plus 10% as per Excise rules. It was stressed that none of the goods or services contemplated under section 80IA(7) r.w.s. 10B(7) of the Act were transferred at less than market value, hence provisions of said section were not attracted. The Assessing Officer did not accept explanation of assessee and also observed that assessee was not maintaining separate set of books of account for three units. Therefore, accuracy of claim of expenditure was doubted. The Assessing Officer compared employees cost of each of the units and observed that where percentage of sales of Pirangut DTA unit was 6.4%, employees cost was 16.2%. He thus, observed that aspect of cost appropriation was not justifiable. Second point which was noted by Assessing Officer was total intra unit cost purchases of ₹ 1.92 crores were debited to Pirangut DTA unit. The Assessing Officer thus, held that there was no justification for such large intra unit purchases made by taxable unit. Consequently, the Assessing Officer invoked provisions of section 10B(7) of the Act and computed profit of Pirangut DTA unit at 7% of total profit, which worked out to ₹ 1.97 crores and hence, claim of 10B deduction was reduced by ₹ 1.68 crores.

19. The CIT(A) upheld the order of Assessing Officer in invoking provisions of section 10B(7) r.w.s. 80IA(7) of the Act for re-working profits.

20. Section 10B(7) of the Act clearly provides that where any goods held for the purpose of eligible business are transferred to any other business carried on by assessee; or any goods or services are so transferred to eligible business and in either case, the consideration, if any, for such transfer as recorded in the accounts of eligible business, does not correspond to the market value of such goods or services, then, for the purpose of deduction under the said section, profits and gains of such eligible business shall be computed as if the transfer in either case had been made at the market value of such goods or services. So, first step which needs to be met is the transfer of goods or services from one unit to other unit in order to attract provisions of section 10B(7) of the Act. The Assessing Officer has failed to meet the said plea of assessee, which was repeatedly raised before him. In the absence of any arrangement, provisions of section 10B(7) of the Act are not attracted. Once the aforesaid provisions are not attracted, then the whole addition falls through.

21. Before parting, we may refer to page 44 of Paper Book filed by assessee, wherein the assessee has filed tabulated details of receipts and expenditure on year-wise basis. The Assessing Officer has not disturbed the said allocation of expenses but has restricted the disallowance made on account of employees cost and total intra unit purchases. The assessee has been consistently following this method of allocation of expenses. In assessment year 2007-08, the assessee had made aforesaid allocation of expenses which has not been disturbed by Assessing Officer in assessment order passed under section 143(3) of the Act. Accordingly, we find no merit in

the order of Assessing Officer in this regard and reversing the finding of CIT(A), we allow the claim of assessee in entirety.

22. Now, coming to last appeal in assessment year 2012-13, wherein only three issues are raised, which are identical to the issues raised in assessment year 2010-11 and our decision in assessment year 2010-11 would apply *mutatis mutandis* to assessment year 2012-13.

23. In the result, the appeals of assessee in ITA Nos.2631/PUN/2016, 357/PUN/2017 and 2633/PUN/2016 allowed and appeal in ITA No.2632/PUN/2016 is dismissed as academic.

Order pronounced on this 27<sup>th</sup> day of June, 2019.

Sd/-  
**(ANIL CHATURVEDI)**  
 लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
**(SUSHMA CHOWLA)**  
 न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> June, 2019.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-6, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
 आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune