

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI

Before S/Shri Pramod Kumar, Vice-President, &  
Saktijit Dey, Judicial Member

ITA No.2944/Mum/2018  
Assessment Year 2012-13

Glenmark Pharmaceuticals Limited Glenmark House, HDO Corporate Bldg., Wing A, B D Sawant Marg, Chakala, Opp Western Express Highway, Andheri (East), Mumbai 400 099.  PAN AAACG2207L  (Appellant)	Vs	Commissioner of Income Tax- LTU, Mumbai       (Respondent)
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Appellant By : Shri Vijay Mehta  
Respondent By : Shri M Dayasagar

Date of Hearing :12.09.2019

Date of Pronouncement : 30.09.2019

**ORDER**

**Per Saktijit Dey, Judicial Member:**

Captioned appeal by the assessee is directed against the order, dated 21.03.2018, passed u/s. 263 of the Act by learned CIT(LTU), Mumbai, for the assessment year 2012-13.

2. Briefly, the facts are, the assessee, an Indian Company, is engaged in manufacture and sale of pharmaceutical products. For the assessment year under dispute, assessee filed its return of income on 30.11.2012, declaring total income of Rs. 55,27,08,010/- under normal provisions of the Act and book profit of Rs. 284,09,23,715/- u/s. 115JB of the Act. The assessment in

case of assessee was completed u/s. 143(3) r.w.s. 144C(3) of the Act vide order dated 22.03.2016, determining total income under the normal provisions of the Act at Rs. 124,62,26,341/- and book profit of Rs. 303,96,67,508/- u/s. 115JB of the Act. Since the tax computed on the total income under the normal provisions was less than tax on the book profit computed u/s. 115JB of the Act, the Assessing Officer ultimately, assessed the total income u/s. 115JB of the Act. Against the assessment order so passed, assessee preferred appeal before learned CIT(A). However, in the present appeal, we are not concerned with the issues raised in the said appeal. When the matter stood thus, the learned CIT called for and examined the records of the assessee in exercise of power u/s. 263 of the Act. While doing so, she found that the assessee had claimed 5283.82 lac as weighted deduction u/s. 35(2AB) of the Act, which was allowed by the Assessing Officer while completing the assessment. She further noticed that revenue expenditure of Rs. 5302.03 lac incurred by the assessee was for providing Research & Development services to its Associate Enterprise (AE) – Glenmark Pharmaceuticals SA (GPSA). She further found that for providing such contract Research and Development services to AE, the assessee had received income of Rs 6671.79 lacs. Having noticed the aforesaid facts, learned CIT was of the view that while computing net expenditure on Research & Development activities, instead of reducing the contract Research

& Development expenditure, the Contract Research & Development income of Rs 6671.79 lacs was required to be reduced for claiming deduction u/s. 35(2AB) of the Act. She observed, by not doing so has resulted in allowance of excess claim of Research & Development expenses resulting in excess allowance of weighted deduction u/s. 35(2AB) of the Act to the extent of Rs 2739.52 lacs resulting in excess carry forward of MAT credit of Rs 888.84 lacs. On the foresaid premises she issued a notice u/s. 263 of the Act directing the assessee to show cause as to why the assessment order passed should not be held as erroneous and prejudicial to the interest of the Revenue, hence, to be revised.

3. In response to the said show cause notice, assessee filed detailed submissions on 28.02.2018, objecting to the proposed action of learned CIT for setting aside the assessment order. It was submitted by the assessee that the weighted deduction claimed u/s. 35(2AB) of the Act is in terms with the statutory provisions and after fully complying with all the conditions mentioned therein. Further, it was submitted, in the course of assessment proceedings, the Assessing Officer had made detailed enquiry with regard to assessee's claim of weighted deduction and, being satisfied that assessee has fulfilled conditions of section 35(2AB) of the Act had allowed the claim. Further, it was submitted, since, as per the provisions of section 35(2AB) of the Act, deduction has to be allowed on the basis of Research & Development

expenditure incurred, the income received cannot be reduced. It was submitted, since while computing deduction u/s. 35(2AB) of the Act, assessee had voluntarily excluded contract Research & Development expenditure, there is no error in the allowance of deduction u/s. 35(2AB) of the Act. To support its contention, assessee relied upon the decision of ITAT, Mumbai Bench in the case of ACIT vs. Wockhardt Ltd. in ITA No.71/um/2007 and the decision of Hon'ble Karnataka High Court in the case of CIT vs. Microlabs Limited [2016] 383 ITR 490. Further, it was submitted by assessee that it had already offered income in respect of contract Research & Development receipts. After considering the submissions of the assessee, learned CIT observed that against the decision of the Tribunal in the case of ACIT vs. Wockhardt Ltd (supra), the department has filed reference before the Hon'ble Bombay High Court. Thus, she directed the Assessing Officer to compute the deduction u/s. 35(2AB) of the Act after netting off the contract Research & Development income.

4. Reiterating the stand taken before learned CIT the learned AR submitted, in course of assessment proceedings, assessee had furnished all details relating to the deduction claimed u/s. 35(2AB) of the Act. He submitted, the Assessing Officer having made necessary enquiries and applied his mind to the material placed before him as well as relevant statutory provisions has allowed assessee's claim of deduction. He

submitted, as per section 35(2AB) of the Act, deduction has to be allowed on the basis of expenditure incurred for Research & Development. He submitted, the expenditure incurred by assessee in Research & Development in its in-house Research & Development facilities has been certified by competent authorities and all conditions of section 35(2AB) have been fulfilled. He submitted, considering the fact that it has carried out Research & Development work on behalf of its AE on contractual basis, assessee had voluntarily excluded the contract Research & Development expenses while computing deduction u/s. 35(2AB) of the Act. He submitted, the statutory provision nowhere speaks of computation of weighted deduction after reducing income. In support he relied upon the decision of co-ordinate Bench in the case of ACIT vs. Wockhardt Ltd (supra). He submitted, learned CIT has not pointed out any specific error in the decision of the Assessing Officer while allowing assessee's claim of deduction u/s. 35(2AB) of the Act. He submitted, merely because the department has contested the decision of the Tribunal in the case of ACIT vs. Wockhardt Ltd. (supra), assessment order cannot be held as erroneous and prejudicial to the interest of Revenue. Thus, he submitted, the exercise of power u/s. 263 of the Act, in the present case is invalid.

5. The learned DR relied upon the observations of learned CIT.

6. We have considered rival submissions and perused material on record. Undisputedly, learned CIT has exercised her power u/s. 263 of the Act qua the issue of assessee's claim of deduction u/s. 35(2AB) of the Act. It is the view of learned CIT that while computing deduction u/s. 35(2AB) of the act, assessee should have reduced the contract Research & Development income instead of contract Research & Development expenditure. Accordingly, she has set aside the assessment order with a direction to reduce contract Research & Development income while computing deduction u/s. 35(2AB) of the Act. On perusal of material placed on record, it is noticed that not only in the return of income but in course of assessment proceedings also assessee had furnished all necessary and relevant information/documents to justify its claim of deduction u/s. 35(2AB) of the Act. It is also noticed, during the assessment proceedings, the Assessing Officer had enquired into the issue and, thereafter, has allowed assessee's claim of deduction u/s. 35(2AB) of the Act. In fact, neither in the show cause notice nor in the impugned order passed u/s. 263 of the Act learned CIT has made any allegation regarding non-enquiry or even lack of enquiry by the Assessing Officer on the issue. The limited point of dispute raised by learned CIT, is instead of reducing contract Research & Development expenditure, assessee should have reduced contract Research & Development income for computing deduction u/s. 35(2AB) of the Act. Pertinently, while replying to this particular aspect

raised by learned CIT in the show cause notice, assessee had specifically submitted that provision of section 35(2AB) speaks of Research & Development expenditure and not income. To support such contention, the assessee has also cited the decision of the Tribunal in the case of ACIT vs. Wockhardt Ltd (supra). It is obvious, learned CIT has not countered the specific submissions of the assessee on this issue. Even, she has not denied the fact that as per the decision of the Tribunal in the case of ACIT vs. Wockhardt Ltd (supra), only Research & Development expenditure has to be reduced and not the income. By merely stating that the department has contested the decision of the Tribunal in the case of ACIT vs. Wockhardt Ltd (supra) by filing a reference in the Hon'ble Bombay High Court, she has directed the Assessing Officer to net off the contract Research & Development income in place of Research & Development expenditure. In the aforesaid premises, in our view, assessment order passed cannot be held to be erroneous and prejudicial to the interest of the Revenue when the deduction claimed u/s. 35(2AB) of the Act is not only in conformity with the statutory provisions but also in consonance with the decision of the Tribunal on the issue. In view of the aforesaid, we hold that the exercise of power u/s. 263 of the Act in the instant case is invalid hence, unsustainable. Accordingly, we set aside the impugned order of learned CIT passed u/s. 263 of the Act and restore the assessment order. The grounds are allowed.

7. In the result, assessee's appeal is allowed.

Order pronounced in the open court on this 30<sup>th</sup> day of September, 2019.

Sd/-  
**(Pramod Kumar)**  
**VICE-PRESIDENT**

Sd/-  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

Mumbai; Dated : 30<sup>th</sup> September, 2019.

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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'G' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai