

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SHRI P. MADHAVI DEVI, JUDICIAL MEMBER AND
D.S. SUNDER SINGH, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCE)**

**ITA No. 1022/Hyd/2017
Assessment Year: 2013-14**

Dy. Commissioner of Income- vs. Covalent Laboratories Pvt.
tax, Circle – 1(2), Hyderabad. Ltd., Hyderabad.

PAN – AABCC 9544R

(Appellant)

(Respondent)

**ITA No. 863/Hyd/2017
Assessment Year: 2013-14**

Covalent Laboratories Pvt. Ltd.,
Hyderabad.

Dy. Commissioner of Income
tax, Circle – 1(2), Hyderabad.

PAN – AABCC 9544R

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Shri YVST Sai

Date of hearing : 08-09-2020

Date of pronouncement : 11-09-2020

ORDER

PER D.S. SUNDER SINGH, A.M.

Both these appeals are cross appeals by the assessee as well as revenue directed against the order of Id. CIT(A) – 1, Hyderabad, dated 06/02/2017 for AY 2013-14.

ITA No. 1022/Hyd/2017 – appeal of the revenue

2. Ground Nos. 1 to 4 are related to the action of the Id. CIT(A) in deleting the disallowance of R&D Expenditure of Rs. 1,10,48,321/- by accepting the additional evidence in the form of bills for consumables submitted by the assessee for the first time before the CIT(A). Brief facts of the case are that during the assessment proceedings, the AO found that the assessee had debited in P&L Account R&D expenses to the extent of Rs. 1,10,48,321/-. Since the assessee failed to submit the bills/vouchers etc. pertaining to the said R&D expenses, the AO made the addition of the said amount of Rs. 1,10,48,321/-.

2.1 The assessee went on appeal before the CIT(A) and the Id. CIT(A) deleted the said disallowance on the basis of the additional evidence and the submissions made by the Id. AR during the appeal hearing before first Appellate Authority.

3. Against the order of Id. CIT(A), the revenue is in appeal before us.

4. Before us, the Id. DR submitted that the Id. CIT(A) has accepted the additional evidence in the form of bills, vouchers for consumables, which have been filed for the first time before the Id. CIT(A). He further submitted that the survey u/s 133A was conducted in the premises of the assessee and statements of the Sr. Executives were recorded wherein they had stated that no separate expenditure was incurred for acquiring material for R&D work and the entire raw materials required for R&D were procured from the regular purchases for production. He further submitted

that the assessee had failed to produce original bills/vouchers to substantiate R&D expenditure at the time of survey as well as in the assessment proceedings. Therefore argued that the Id. CIT(A) ought not to have admitted the additional evidence or at least given the opportunity to the AO as required u/s 46A of IT Rules. Therefore, the Id. DR requested to set aside order of the Id. CIT(A) and the order of AO be restored.

5. On the other hand, Id. AR of the assessee supported the order of the Id. CIT(A).

6. We have considered the rival submissions and perused the material placed on record. The Id. CIT(A) deleted the disallowance made by the AO based on the additional evidence produced by the assessee. We find that the additional evidence has placed by the assessee for the first time before the Id. CIT(A) and the Id. CIT(A) has decided the addition without calling for remand report from the AO and without making any verification of the expenditure independently. Therefore, in the interest of justice, we are of the view that the issue is to be remitted back to the file of the AO and accordingly, we remit the issue back to the file of the AO with a direction to reexamine the issue and decide the same on merits in accordance with law after providing reasonable opportunity of being heard to the assessee. Thus, ground Nos. 1 to 4 are treated as allowed for statistical purposes.

7. Ground No. 5 to 7 are directed against the action of the CIT(A) in deleting the addition made by the AO of Rs. 19,80,09,010/- on account of under reporting of consignment sales the assessee during the year made through M/s ABS Mercantile Pvt Ltd(in short consignee).

8. The AO found that the assessee had accounted for the sales of Rs. 74,90,49,064/- through M/s ABS Mercantile Pvt. Ltd. (ABS in short) When the confirmation u/s 133(6) was called from the ABS, it was found that the sales effected was Rs. 94.70 crores as against 74.90 reported by the assessee. When the AO asked the assessee to explain the said difference, the assessee furnished the reconciliation statement reducing the sales of Rs.14,07,65,059/- stated to be relating to M/s Adley Formulation, cheques cancelled for the amount of Rs.2,14,66,883/- and also opening consignment stock of Rs.4,99,05,220/-. On verification the AO found that M/s Adley Formulation sales were not reflected in the Statement of sales for the AY 2013-14 and the amount representing cheques were not accounted as per the system of accounting followed by the assessee and the opening balance of consignment stock was not clarified as the information received from the ABS u/s 133(6) does not contain the same. Therefore the AO rejected the explanation of the assessee and made the addition of Rs. 19,80,08,010/-. Against which, the assessee went on appeal before the Id. CIT(A).

8.1 Before the Id. CIT(A), the assessee filed reconciliation statement and the Id. CIT(A) did not find any difference between sales reported by the assessee and the ABS, thus deleted the addition of consignment sales difference of Rs. 19,80,08,010/- ,hence, the department is in appeal before us.

9. We have heard the rival contentions and perused the material placed on record. In the instant case, the AO made the addition of Rs. 19,80,08,010/- on account of under reporting of consignment sales. As per the information received from the consignee, the sales were Rs. 94.70 crores as against the admitted sales of Rs. 74.90 crores. During the assessment proceedings, the AO gave opportunity to the assessee to file reconciliation statement and on perusal of the reconciliation statement, the AO found the discrepancies with regard to sales made to M/s Adley Formulation, opening stock of consignment and the cancellation of cheques etc. The Id. CIT(A) merely relied on the reconciliation statement without verifying the same with the books of account representing the cheques cancelled. The Id. DR contended that the opening balance claimed by the assessee was not reported by the ABS in it's reply and with regard to the cancellation of cheques and the stocks sold were required to be verified. Similarly with regard to the sales of M/s Adley Formulation the AO found that he same was not reflected

separately in the statement of sales for the A.Y2013-14. The Ld. CIT(A) deleted the addition without calling the remand report of the AO. Therefore, the issue needs to be verified with the books of account and if necessary cross verification to be made with ABS to reconcile the sales. Therefore, both the parties have agreed to remit the matter back to the file of the AO for further verification and reconciliation. Hence, in the interest of justice, we remit this matter back to the file of AO with a direction to reexamine the issue and decide the same afresh after providing reasonable opportunity of being heard to the assessee. Accordingly, ground No. 5 is treated as allowed for statistical purposes.

10. Ground Nos. 8 & 9 are directed against the action of the CIT(A) in deleting the addition of Rs. 5,06,343/- made by the AO on account of disallowance of expenditure u/s 14A of the Act.

11. We have heard the submissions of both the parties and perused the material placed on record. There was no dispute that in the impugned AY, the assessee did not earn any exempt income. When the assessee has not earned any exempt income and there can be no disallowance under section 14A of the Act. The Hon'ble Delhi High Court in the case of Cheminvest Ltd., reported in (2015) 378 ITR 33 (Del.) has held that section 14A will not apply where no exempt income is received or receivable during the relevant assessment year. Similar view is taken by this Tribunal in the case of Prathista Industries Ltd., Secunderabad in ITA No. 1302/hyd/2015

dated 29/04/2016. Respectfully following the view taken by the coordinate bench of ITAT, we hold that no disallowance is called for u/s 14A. Accordingly, we uphold the order of the Id. CIT(A) on this issue and dismiss the ground raised by the revenue on this issue.

12. Ground Nos. 10 to 12 are directed against the action of CIT(A) in deleting the addition of Rs. 1,35,65,645/- made by the AO on account of disallowance of interest expenditure attributable interest free advances made by the assessee to the group concerns i.e. SV's Remedies Ltd.

13. The contention of the revenue is that the assessee has advanced interest free funds to SV's Remedies Ltd. out of interest bearing borrowed funds, hence, the disallowance needs to be made u/s 36(1)(iii) of the Act.

14. The contention of the Id. AR is that the assessee is having interest free funds, out of which, the assessee has advanced the sums and therefore, no disallowance is called for.

15. We have considered the rival submissions and perused the material on record. No information was placed before us to substantiate, whether the assessee has advanced interest free funds or interest bearing borrowed funds to its group concerns. Hence, this issue also needs verification at the end of the AO with regard to the availability of interest free funds and both the

counsels have agreed to remit the matter back to the file of the AO to verify the facts. Accordingly the issue is remitted back to the file of the AO with a direction to examine whether the assessee has made advances out of interest free funds or interest bearing funds and decide the issue afresh on merits after giving opportunity to the assessee. The grounds raised on this issue are treated as allowed for statistical purposes.

16. In the result, appeal of the revenue is partly allowed for statistical purposes.

ITA No. 863/Hyd/2017 by the assessee

17. The assessee has raised 6 grounds in its appeal, out of which ground Nos. 1 & 6 are general in nature, which need no adjudication.

18. Ground No. 2 is related to the addition of Rs. 18,55,71,506/- on account of difference of amount between the books of account of the assessee and the books of ABS Mercantile (P) Ltd. Ground No. 3 is related to sustaining the addition of Rs. 97,94,743/- made by the AO with regard to excess claim of purchases.

19. The AO made the addition of Rs. 18,55,71,506/- after calling for information u/s 133(6) from M/s ABS Mercantile Pvt. Ltd. wherein the ABS confirmed payables at Rs. 4,70,80,629/- as against Rs. 23,26,52,135/- reported by the assessee in the balance sheet. On calling for explanation, the assessee submitted the account copy of ABS in the books of the assessee and made certain adjustment to

tally the balance in the books of the assessee with that of ABS. However no material was placed by the assessee to support the adjustments. Therefore the AO made the addition of Rs.18,55,71,506/- in hands of the assessee.

19.1 Before the Id. CIT(A), assessee filed paper book with account copies of the assessee in the books of M/s ABS Mercantile Pvt. Ltd. In page nos. 222 to 233 of the paper book, wherein, certain adjustments were made on 31/03/2013 with regard to closing stock and debtors against consignment sales in the books of M/s ABS Mercantile Pvt. Ltd. The Id. CIT(A). Not being convinced with the explanation of the assessee, the Id. CIT(A) sustained the addition made by the AO.

20. We have heard both the parties and perused the material on record. In this case, the AO collected information u/s 133(6) of the Act and as per the information received by the AO, the outstanding shown by the ABS Mercantile Pvt. Ltd. was Rs. 4,70,80,629/- whereas in the books of account of the assessee, it was shown at Rs. 23,26,52,135/-. Thus, there was a difference of Rs. 18,55,71,506/-. Though, the assessee filed account copy of the assessee in the books of M/s ABS Mercantile Pvt. Ltd., the assessee has not furnished the supporting evidences before the lower authorities. Since the entries are made in the books of accounts the claim of the assessee cannot be brushed aside merely because the assessee has not submitted the supporting documents. In this case the assessee is maintaining the

regular books of accounts which were produced before the AO. The assessee also duty bound to explain the discrepancies with the books of accounts and the supporting documents. The correctness of the entries made in the ABS and the reconciliation submitted by the assessee needs verification. It appears to us that there were some issues which need to be verified relating to the accounts of ABS. As discussed in Paras 8 to 10 of this order, the AO made the addition of Rs. 19.80 crores due to under reporting of sales in respect of ABS. We are of the opinion that the account of ABS needs to be verified in detail to ascertain the factual position. Therefore we remit the matter back to the file of AO with a direction to cause necessary enquiries with M/s ABS Mercantile Pvt Ltd and decide the issue afresh on merits. Needless to say that opportunity should be given to the assessee.

21. The issue in ground No. 3 is with regard to the differences in purchases debited to the Profit and Loss account and the information received from the vendors. The difference is as under:

	Vendor Name	Purchases debited to profit & loss account (Rs)	Sales made to you by vendor (as per 133(6) (Rs.)	Excess debit (Rs.
1.	G. Amphray Labs	6,76,20,369	6,48,48,309	27,72,060
2.	SI Group Navi Mumbai	5,74,77,748	5,04,55,065	70,22,683

As found from the assessment order, the assessee failed to reconcile the discrepancies in purchases with reference to G. Amphray Labs and SI Group Navi Mumbai, inspite of giving show cause notice and giving opportunities hence the AO made the addition of Rs.97,94,743/-.

21.1 On an appeal before the CIT(A), the assessee filed reconciliation statement. However, Id CIT(A) not being satisfied with the explanation dismissed the ground of appeal of the assessee.

22. The Id. AR submitted before us that there was no difference in purchases and, thus, the addition of Rs. 97.94 lakhs is unwarranted. The Ld.AR further submitted that the differences were due to non-consideration of returned goods, credit notes and the cheques returned. The Ld. AR stated that though he has submitted the information before the lower authorities the same was not considered and if the opportunity is given the assessee would be able to establish the correctness of the purchases debited to the P&L account. He further submitted that all the payments were made through Banking Channels. He, therefore, requested to remit the matter back to the file of the AO, for which Id. DR did not express any objection.

23. We have carefully considered the submission of the assessee and find merit in the argument of the Ld.AR. In this regard there is no dispute that the assessee filed reconciliation statement before the Ld. CIT(A) and the Ld. CIT(A) rejected the assessee's claim for want of

cross verifications. The Ld. CIT(A) ought have verified the information or should have called for the remand report from the AO. It is unjustified to reject the claim without making proper verification. Therefore we, remit the issue back to the file of the AO with a direction make necessary verifications and cross verifications and decide the issue afresh on merits after providing reasonable opportunity of being heard to the assessee. Thus, ground Nos. 2 & 3 are treated as allowed for statistical purposes.

24. Ground No. 4 is related to disallowance of commission expenses of Rs. 1,75,06,656/- paid to M/s Feroz Tejarat Co.

25. The AO during the survey proceedings, found that the company had paid huge commission to one Mr. Feroz Tejarath, who is based at overseas for AY 2012-13 to AY 2015-16. It was further noticed that the complete amount of commission claimed on this account, for all these years was shown as payable on the date of survey. When the assessee was asked to provide documentary evidence in support of the genuineness of the commission expenses claimed, the assessee failed to provide the relevant documentary evidence despite sufficient opportunities were given. The AO, therefore, disallowance said amount of Rs. 1,75,06,656/-, which was confirmed by the CIT(A). Aggrieved, the assessee is in appeal before us.

26. We have heard the submissions of both the parties and perused the material on record. Before the Id. CIT(A), the assessee submitted that Feroz Tejarath is the sales agent to book orders from Alborz Bulk

Pharma Co. The assessee fixes the sale price and the said commission agent adds his commission to the said sale price as agreed between both of them. The assessee stated to have been placed the following evidences before the Id. CIT(A):

- *Invoice copy of M/s. Alborz Bulk Pharma Co., Iran, Unit 3,4, No.13, Mirza Hasani Alley, Ghaemmagham Farahani St, Tehran, Iran in Invoice No.EXP/114/2012-13, dated 12.07.2012 for 200kgs of HDPE Drums Cefixime @ 160 USD totaling amount of 3,20,000 USD.*
- *Invoice copy of M/s. Oponin Pharma Ltd., Bagura Road, Barisal, Bangladesh in Invoice No.EXPj120j2012-13, dated 30.07.2012 for 300 Kgs of HDPE Drums Cefixime Trihydrate Micronized USP @136 totaling amount of 40,800 USD.”*

The Id. AR argued that though payments were made subsequent to the date after the sale, merely because the payment was subsequent to the sale, does not permit the AO to make addition. Ld. AR further submitted that both the lower authorities failed to appreciate the evidences placed before them and requested for one more opportunity to substantiate its claim before the lower authorities. He further submitted that the assessee will extend all cooperation and assist the AO in completion of the assessment. He, therefore, requested to remit the matter back to the file of the AO for reconsideration and reexamination of the issue. The Id. DR did not object for remitting the matter back to the file of the AO.

27. Considering the submissions made by the Id. AR and the fact that the evidences were placed by the assessee before the Ld. CIT(A) for the first time, we are inclined to remit this issue back to the file of the AO with a direction to examine the correctness and genuineness

of the expenditure with the evidences produced by the assessee and decide the issue afresh on merits and after providing reasonable opportunity of being heard to the assessee. Accordingly, this ground is allowed for statistical purposes.

28. Ground No.5 is regarding levy of interest u/s 234B and 234C of the Act. Charging interest under these sections is consequential in nature, the AO is directed accordingly.

29. In the result, appeal of the assessee is allowed for statistical purposes.

30. To sum up, appeal of the revenue in ITA No. 1022/Hyd/2017 is partly allowed for statistical purposes and the appeal of the assessee in ITA No. 863/Hyd/2017 is allowed for statistical purposes.

Pronounced in the open court on 11th September, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMEBR

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 11th September, 2020.

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- 1) *Covalent Laboratories Pvt. Ltd., H.no. 8-3-677/18, 2nd Floor, SKD Nagar, Yellareddyguda, Hyderabad – 500 073*
- 2) *DCIT, Circle – 1(2), IT Towers, AC Guards, Hyderabad.*
- 3) *CIT(A) - 1, Hyderabad*
- 4) *Pr. CIT - 1 Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File.*