

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2821/MUM/2018
Assessment Year: 2013-2014
&
ITA No. 2822/MUM/2018
Assessment Year: 2014-2015**

Aarey Drugs & Pharmaceuticals Ltd., B/1504, Highland Park, Lokhandwala, New Link Road, Andheri (West), Mumbai - 400053 PAN: AAACA5253A	Vs.	The DCIT Central Circle- 2(3), Old CGO Bldg., Room 803, 8 th Flr, MK Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Dharmil Jhaveri & A.C. Jhaveri (ARs)
Revenue by : Shri Michael Jerald (DR)

Date of Hearing: 24/02/2020
Date of Pronouncement: 26/02/2020

ORDER

PER RAM LAL NEGI, JM

These appeals have been filed by the assessee against the two orders dated 28.03.2018 and 26.03.2018 passed by the Commissioner of Income Tax (Appeals)-48 (for short 'the CIT(A), Mumbai, for the assessment years 2013-14 and 2014-15 respectively, whereby the Ld. CIT(A) has partly allowed the appeal pertaining to the AY 2013-14 and dismissed the appeal pertaining to the AY 2014-2015, filed by the assessee against the assessment orders passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act')

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2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following grounds:-

1. *“The Ld. CIT (A) has neither given proper opportunity of hearing to the Appellant before deciding the appeal.*
2. *The Ld. CIT (A) not justified in treating the ROC fees as a capital expenditure instead of revenue expenditure.*
3. *The Ld. CIT (A) not justified in disallowing the claim of depreciation fully. The assessee has purchased the machinery worth of Rs. 40,47,187/- during F.Y. 2008-09 from suspicious hawala dealer and Ld. AO disallowed the cost of purchase and depreciation both which is against the principal of natural justice.*
4. *The Ld. CIT (A) not justified in disallowing the payment to Surya Chemical by treating the nature of payment as commission instead of rate difference. There is no provision of TDS on rate difference. Hence disallowance is unjustified and unwarranted.*
5. *The Ld. CIT (A) not justified in disallowing the interest expenses for payments/advances made in due course of business.”*

Prayer:

- 1) *The Appellant hereby prays that all the additions as above may be deleted in full.”*

3. Before us, the Ld. counsel for the assessee filed written submissions and submitted that the assessee issued the Right Issue during the assessment year 2012-13 and the total expenses for the same was Rs. 15,67,634/-. The assessee has written off 20% of the total expenses for the AY 2012-13 to AY 2017-18 as per provisions of Section 35D of the Act. Therefore, the disallowance of 20% of the cost of the Right Issue is unjustified and unwarranted. So far as the 15% disallowance of depreciation is concerned, the Ld. counsel submitted that the assessee has made addition to the Fixed Assets under the head Plant and Machinery amounting to Rs. 60,91,874/- during the FY 2010-11 as per the Installation Certificate and Fixed Asset Register

maintained by the assessee. The said asset was in used during the concerned years, therefore, the revenue has wrongly disallowed the depreciation on opening written down value of Rs. 44,01,373/-. The Ld. counsel further pointed out that the assessee has allowed credit note to M/s Surya Chemicals for rate difference discount. There is no provision for TDS on discount, therefore, the disallowance due to non deduction of TDS is unjustified. So far as the addition on account of interest on advances is concerned, the Ld. counsel submitted that the assessee has given advances for purchase of Fixed Asset. The same was outstanding as on 31.03.2013. The said advances were paid during the course of business therefore the authorities below have wrongly made disallowance of 15% interest expenses on assumption and estimation basis, which is not justified.

4. The Ld. counsel further submitted that the authorities below have not taken into the consideration of the contentions of the assessee as the assessee was not afforded a reasonable opportunity of being heard. The Ld. counsel further submitted that the impugned order passed by the Ld. CIT (A) is not in accordance with the evidence on record, therefore the same may be set aside or in alternative, the issues may be set aside to the file of AO for passing the assessment order afresh in the light of the submissions made by the assessee.

5. On the other hand, the Ld. Departmental Representative (DR) supported the order passed by the Ld. CIT (A) and submitted that since the AO has made detail findings in the order. The Ld. CIT (A) has rightly endorsed the findings of the AO.

6. We have heard the rival submissions and gone through the material on record including the impugned order passed by the Ld. CIT (A). We notice that the Ld. CIT (A) has decided the issues involved in the present appeal by referring the relevant paras of the assessment order passed by the AO. We further notice that the plea raised by the assessee before us are not reflected in the assessment order. The Ld. CIT (A) has endorsed the order of the AO and not recorded his findings. Hence, we are of the considered view that the assessee

should get one more opportunity to present its case before the AO. The Ld. DR has no objection in case the appeal is send back to the AO for passing assessment order afresh in the light of the submissions made before us.

7. We accordingly, set aside the order passed by the Ld. CIT (A) and send the file back to the AO for passing assessment order afresh after considering the written submissions filed before us after affording a reasonable opportunity of being heard to the assessee. Hence, we allow the assessee's appeal for statistical purposes.

ITA No. 2822/MUM/2018 (Assessment Year: 2014-2015)

The facts of the present case and the issues involved are similar to the facts of the case and the issues involved in the assessee's own case for the AY 2013-14.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *"The Ld. CIT (A) has neither given proper opportunity of hearing to the Appellant before deciding the appeal.*
2. *The Ld. CIT (A) not justified in treating the ROC fees as a capital expenditure instead of revenue expenditure.*
3. *The Ld. CIT (A) not justified in disallowing the claim of depreciation fully. The assessee has purchased the machinery worth of Rs. 40,47,187/- during F.Y. 2008-09 from suspicious hawala dealer and Ld. AO disallowed the cost of purchase and depreciation both which is against the principal of natural justice.*
4. *The Ld. CIT (A) not justified in disallowing the advertisement expenditure by treating is as a donation expense which is unjustified and unwarranted.*

Prayer:

- 2) *The Appellant hereby prays that all the additions as above may be deleted in full."*

3. The assessee has filed written submissions in this case also taking the identical plea taken in the appeal pertaining to the assessment year. Since, we have set aside the impugned order passed by the Ld. CIT (A) in the assessee's own case for the AY 2013-14, consistent with our findings, we set aside the

order passed by the Ld. CIT (A) in this case also and send the file back to the AO for passing assessment order afresh in the light of the submissions made by the assessee in its written submissions filed before us.

In the result, appeals filed by the assessee for assessment years 2013-2014 and 2014-2015 are allowed for statistical purposes.

Order pronounced in the open court on 26th February, 2020.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 26/02/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai