

THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjti Singh (JM)

I.T.A. No. 2417/Mum/2005 (Assessment Year 1997-98)
I.T.A. No. 855/Mum/2006 (Assessment Year 2001-02)

ACIT, Circle-7(3) Room No. 627 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	Wyeth Limited (Formerly known as Wyeth Lederle Limited) RBC Mahindra Tower 4 th Floor, A Wing Dr.G.M. Bhosale Road Worli, P.O. Box 6585 Mumbai-400018.
(Appellant)		(Respondent)

I.T.A. No. 1163/Mum/2006 (Assessment Year 2001-02)
I.T.A. No. 3313/Mum/2005 (Assessment Year 1999-2000)
I.T.A. No. 2349/Mum/2005 (Assessment Year 1997-98)
I.T.A. No. 1153/Mum/2002 (Assessment Year 1997-98)
I.T.A. No. 3456/Mum/2010 (Assessment Year 2004-05)
C.O. No. 230/Mum/2006 (Assessment Year 2001-02)

Wyeth Limited (Formerly known as Wyeth Lederle Limited) RBC Mahindra Tower 4 th Floor, A Wing, Dr.G.M. Bhosale Road, Worli, P.O. Box 6585, Mumbai-400018.	Vs.	DCIT/ACIT Circle-7(3) Room No. 627 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN : AAACW2641Q

Assessee by	Shri Neeraj
Department by	Shri Asif Karmali
Date of Hearing	15.11.2021
Date of Pronouncement	18.11.2021

ORDER

Per Bench :-

ITA No. 3456/Mum/2010, 1153/Mum/2002, 2349/Mum/2005, 3313/Mum/2005 & 1163/Mum/2006

These are appeals by the assessee against the respective orders of learned CIT(A) for respective assessment years.

2. At the outset, it is submitted that assessee has opted for solution of dispute under the Vivad Se Vishwas Scheme.

3. We note that in a similar situation, Hon'ble Madras High Court has in an appeal in the case of M/s. Nannusamy Mohan (HUF) Vs. ACIT vide order dated 16.10.2020 held as under :-

“3. The learned counsel for the appellant/assessee, on instructions, submitted that the appellant/assessee intends to avail the benefit of Vivad Se Vishwas Scheme (‘VVS Scheme’ for brevity) and in this regard, the assessee is taking steps to file the application/declaration in Form No. I.

4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.

5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) “disputed tax” has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.

6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished

are also mentioned in the Sub Sections of Section 4, Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, We direct the appellant/assessee to file the Form No.I on or before 20.11.2020 and the competent authority shall process the application/declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.”

4. Accordingly, respectfully following the above and noting the fact that the assessee is opting for resolution of dispute under VSVS Scheme in the present case, we treat this appeal being disposed off as withdrawn.

5. The assessee is given liberty for restoration of appeals in accordance with paragraph 7 of the Hon'ble High Court order as above.

6. In the result, these appeals by the assessee is disposed of by treating the same as withdrawn.

7. ITA No. 2417/Mum/2005 & ITA No. 855/Mum/2006

These appeals by the revenue are directed against respective orders of learned CIT-A and pertain to assessment year 1997-98 & 2001-02.

8. The grounds of appeal for A.Y. 1997-98 read as under :-

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to delete the addition of Rs.31,05,082/- being the value of unutilized import license.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to delete the disallowance of expenditure of Rs.7,22,387/-incurred on VRS without appreciating that expenditure was capital in nature.
 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to grant benefit of provision of Sec. 80HHC in respect of advance import licence of Rs. 1,30,98,079/- by holding wrongly that it is covered under clause (iiib) of Section 28.
9. The grounds of appeal for A.Y. 2001-02 read as under :-
1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in directing the A.O. to delete the addition of Rs. 31,91,493/- on advertisement expense as revenue expenditure relying on Ac occasion of the Metro Shoes Pvt. Ltd., 268 ITR 106 (AT) which the Department has not accepted.
 2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the A.O. to exclude Excise Duty and Sales Tax from the total turnover while computing the deduction u/s. 80HHC relying on the decision of CIT Vs. Sudarshan Chemical India Ltd. (245 ITR 769), which the Department has not accepted.
 3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not applying the ratio of the decision of Gujarat Bench of Hon'ble 1TAT in the case of Gujarat Alkali Chemical reported in 77 TTJ 304 (Ahd) which has considered aforesaid decision of M/s. Sudarshan Chemical Industries in its judgement.
 4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the A.O. to grant benefit of provision of section 80HHC(3) in respect of Advance Import Licence of Rs.71,32,163/- & Rs.46,25,000/- on account of Sales Tax set off by holding that it is covered under clause (iiib) of Section 28.
10. At the outset it is noted that the tax effect in each appeal is below the limit of Rs. 50 lakhs fixed by the CBDT vide latest circular No. 17/2019 dated 8.8.2019 for filing the appeal before the ITAT. Hence, these appeals by the Revenue are not maintainable.
11. Per contra, learned Departmental Representative could not dispute that the tax effect is below the said limit. He could not point out that the appeals fall in any of the exceptions carved in said circular.

12. Upon careful consideration, we find that as the tax effect is below the limit fixed by the CBDT for filing the appeals before the ITAT. Hence, these appeals by the Revenue are liable to be dismissed in limine.

13. C.O. No. 23/Mum/2006

This cross objection is in relation to ITA No. 855/Mum/2006 in Revenue's appeal above.

14. Learned Counsel of the assessee submitted that since Revenue's appeal is liable to be dismissed on tax effect, he shall not be pressing the cross objection. Hence, cross objection is dismissed as withdrawn.

15. In the result, ITA No. 3456/Mum/2010, 1153/Mum/2002, 349/Mum/2005, 3313/Mum/2005 & 1163/Mum/2006 are dismissed as withdrawn and IAT No. 2417/Mum/2005 & ITA No. 855/Mum/2006 stand dismissed on account of tax effect and C.O. No. 230/Mum/2006 stands dismissed as not pressed.

Pronounced in the open court on 18.11.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/11/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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