

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO. 6365/MUM/2016 (A.Y: 2012-13)**

**ITA.NO. 5545/MUM/2017 (A.Y: 2013-14)**

**ITA NO. 3602/MUM/2019 (A.Y: 2014-15)**

DCIT – 6(2)(1) Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Charak Pharma Pvt. Ltd., 21, 2 <sup>nd</sup> Floor Evergreen Industrial Estate Shakti Mill Lane Off. Dr. E. Moses Road Mahalaxmi, Mumbai - 400011  <b>PAN: AABCC4014A</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Manish Shah</b>
<b>Department by</b>	<b>:</b>	<b>Shri R.A. Dhyani</b>
<b>Date of Hearing</b>	<b>:</b>	<b>22.03.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>29.04.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-12, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 25.08.2016, 22.06.2017 for the

A.Y. 2012-13 and 2013-14. ITA.No. 3602/Mum/2019 is filed against order Learned Commissioner of Income-tax (Appeals)–55, Mumbai dated 04.03.2019 for the A.Y. 2014-15.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order.

### **ITA.No. 6365/MUM/2016 (A.Y. 2012-13)**

3. Revenue has raised following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting disallowance under section 80 IB(13) and 80 IC(7) R.W.S 80-1A(8)".

2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in holding that the AO did not find defect with submission of the assessee. It is clear from records that the submission of the assessee was irrelevant to the issue-at-hand and no quantitative reconciliation was furnished to prove the genuineness of material costs debited to individual plant".

3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting disallowance of commission and incentive paid"

4. "Whether on the facts and circumstances of the case and in law, The Ld.CIT(A) erred in giving full relief to the assessee without appreciating the fact that the commission paid to M/s Ayurveda Agencies was excessive in the given facts of the case".

5. "The appellant prays that the order of the Ld CIT(A) on the above grounds be set aside to the file given facts of the case."

4. At the time of hearing, Ld. AR of the assessee referring to Ground Nos. 1 and 3 which are in respect of Recomputation of deduction claimed u/s. 80-IB and 80-IC of the Act; and Disallowance of commission & Incentive Paid to relative entity (Ayurveda Agencies), submitted that the issues raised by the assessee are already decided by the Coordinate Bench of this Tribunal in assessee's own case in ITA.No. 2678/Mum/2016 dated 17.01.2022 for the A.Y. 2011-12 (Copy of the order is placed on record at Page No. 113 of the Paper Book ). Ld. AR requested the same may be adopted for the assessment year under consideration.

5. Ld.DR fairly agreed with the submissions of the Ld. AR of the assessee.

6. Considered the rival submissions and material placed on record, we observed that the issues raised by the assessee are identical to the A.Y.2011-12 wherein the Coordinate Bench decided the issues in favour of the assessee, observing as under: -

*"7. We have considered rival submissions in the light of the decisions relied upon and perused the materials on record. The dispute in these grounds is regarding disallowance of assessee's claim of deduction under section 80IB/80IC of the Act. Facts on record reveal that the eligible unit operating at Silvassa was set up in the year 2002-03 and assessee is claiming deduction under section 80IB of the Act from the very inception. Similarly, the unit at Baddi*

*was set up in the year 2005-06 and from the very inspection assessee is claiming deduction under section 80IC of the Act. The uncontroverted factual position on record demonstrates that assessee's claim of deduction under section 80IB/80IC in past years have been allowed. On perusal of the assessment order, it is very much clear that in course of assessment proceedings, in response to the query raised by the AO, the assessee had furnished various details from time to time, such as, copies of auditor's certificate in Form 10CCB, unit-wise profit and loss account etc. Further, when the Assessing Officer complained that the profit and loss accounts are not in columnar format, the assessee furnished more evidences including profit and loss account in columnar format and many more evidences were submitted in a compact disc(CD). These facts have been accepted by the Assessing Officer in the assessment order. However, the Assessing Officer has not pointed out any defect or deficiency either in the maintenance of unit-wise books of accounts or evidences furnished. By simply entertaining certain doubts and suspicion as to why the material and manufacturing cost in the eligible units is lesser than the non-eligible unit, the Assessing Officer has partly disallowed the deduction claimed u/s 80IB/80IC of the Act. The difference in material and manufacturing cost could be for various factors including modernization in plant and machinery.*

8. *Though, the Assessing Officer has observed that assessee has not fully complied with the conditions enshrined in the deduction provisions, however, he has not illustrated a single instance of such violation. As rightly observed by the learned CIT(A), the Assessing Officer, without appropriately verifying the evidences furnished by the assessee and pointing out specific defect which required reconciliation, has simply made general observation that the assessee could not reconcile certain issues. It is a fact on record that the eligible units at Silvassa and Baddi are operating for past many years and assessee's claim of deduction under section 80IB/80IC of the Act has all along been accepted by the Revenue. Therefore, when there is no material change in the factual position in the impugned assessment year to demonstrate that certain conditions of the relevant statutory provisions have been violated, rule of consistency would apply. Thus keeping in view, the factual position as well as provisions of section 80IB/80IC and applying the ratio laid down in the decision cited before us, we held that the decision of learned CIT(A) on the issue deserves to be upheld. Accordingly, we do so. The grounds are dismissed.*

With regard to disallowance of Commission & incentive paid to relative entity (Ayurveda Agencies) the Coordinate Bench held as under:-

*"12. We have considered rival submissions in the light of the decisions relied upon and perused materials on record. As far as facts are concerned, there is no dispute that the assessee has paid the amount in dispute to M/s Ayurveda Agencies which has undertaken the task of business promotion and marketing on behalf of the assessee. The Assessing Officer has held that M/s Ayurveda Agencies is a related party as the partners therein are wives of the directors of the assessee-company. Therefore, he has disallowed the expenditure, both, under section 37(1) and 40A(2) of the Act. In so far as disallowance under section 37(1) is concerned, there is no dispute that the assessee has entered in an agreement with M/s Ayurveda Agencies on 01.04.2008 for sales promotion and marketing of assessee's products. It is also a fact that the payment of commission and incentive to M/s Ayurveda Agencies is in terms with the service agreement. From the materials on record it is evident that the assessee had been paying commission and incentive to M/s Ayurveda Agencies since assessment year 2005-06 and these payments have also been allowed in the past years. That being the factual position, there cannot be any doubt regarding either the genuineness or commercial expediency of the expenditure. More so, when the assessee has demonstrated that by incurring such expenditure business has grown. It is observed, though, the assessee has placed material before the Assessing Officer to demonstrate that substantial part of assessee's turnover was generated by the efforts of M/s Ayurveda Agencies, the Assessing Officer has simply brushed it aside by observing that assessee failed to prove the medical qualification and expertise of the partners of M/s Ayurveda Agencies. This, in our view, is totally unjustified. Thus, when the assessee has proved the genuineness of expenditure and the business expediency, no disallowance under section 37(1) should have been made*

*13. In so far as disallowance under section 40A(2) of the Act is concerned, on a reading of the said provision it becomes clear that where the Assessing Officer is of the view that the payment made by the assessee to related party is unreasonable and excessive having regard to the market value of the goods and services availed, then such expenditure can be disallowed. Therefore, the burden is entirely on the Assessing Officer to establish on record that the*

*expenditure is unreasonable and excessive having regard to the market value. In the facts of the present case, the Assessing Officer has not undertaken any comparative analysis or has not even brought a single instance of similar expenditure undertaken by any other party to demonstrate that the payment made by the assessee to M/s Ayurveda Agencies is unreasonable and excessive having regard to the market value. The Assessing Officer has not even brought on record any material to demonstrate market value of the services availed. On the contrary, learned CIT(A) has given a factual finding that the commission paid to non-related parties at 14.10% to 20% is more than the rate of commission given to M/s Ayurveda Agencies at 14.10%. The aforesaid factual finding of learned CIT(A) has not been controverted. In view of aforesaid, we fully agree with the decision of learned CIT(A) that no disallowance can be made under section 40A(2) of the Act as well. Accordingly, we uphold the decision of learned CIT(A).*

7. Respectfully following the above said decision along with the principle of consistency, we dismiss the grounds raised by the revenue.

**ITA.No. 5545/MUM/2017 (A.Y. 2013-14)**

8. Revenue has raised following grounds in its appeal: -

1. *"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance under section 80IC(7) r.w.s. 801A(8) without appreciating the fact that the disallowance was worked out by apportioning the net profit of eligible and non-eligible units on the basis of sale ratio."*

9. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2012-13 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2013-14 also, ground raised by the revenue is dismissed. We order accordingly.

**ITA.No. 3602/MUM/2018 (A.Y. 2014-15)**

**10. Revenue has raised following grounds in its appeal: -**

*"Ground No.1*

*Reference to Transfer pricing officer under section 92CA(2) of the Act*

*On the facts and in the circumstance of the case and in law the AO erred in making a reference to the Transfer Pricing Officer, with regards to commission and incentive paid*

*b) the Appellant to M/s. Ayurveda Agencies.*

*Ground No.2*

*Disallowance of commission and incentives paid to related entity – ₹.3,36,67,804/-*

*On the facts and in the circumstances of the case and in law, the AO erred in disallowing the commission and incentives paid to M/s.Ayurveda Agencies on the ground that the said payment is excessive.*

*Ground No.3*

*Re-Computation of deduction claimed under section 80-IC of the Act – ₹.1,76,39,853/-*

*On the facts and in the circumstances of the case and in law, the AO erred in recomputing the profits attributable to the eligible units on the basis or the ratio of turnover of the eligible units to the total turnover of the business of the Appellant by invoking the provisions of section 80-IC read with section 80IA(8) of the act.*

*Ground No.4*

*No change of facts – view adopted by the Tax Department in earlier years cannot be changed: -*

*On the facts and in the circumstances of the case and in law, the AO erred in invoking the provisions of section 80-IC(7) read with section 80-IA(8) of the Act when the issue was already dealt with and considered in earlier Assessment Years.*

*Ground No.5*

Ground V: Disallowance of expenditure incurred on Scientific Research Claimed u/s. 35(2B) of ₹.12,35,000/-

*On the facts and in circumstances of the case and in law the AO erred in disallowing deduction u/s. 35(2AB) of the Act amounting to ₹.1,2,35,000/*

*Ground No.6*

Disallowance under section 14A of the Act amounting to ₹.40,993/-

*On the facts and circumstances of the case and in law, the AO erred in disallowing a total sum of Rs .54,734/- as expenses incurred towards earning exempt income under section 14A of the Act r.w.r. 8D of the Income Tax Rules. 1962 ('the Rules').*

*Ground No. 7*

Adjustment of section 14A disallowance with Book Profit u/s. 115JB of the Act

*On the facts and in the circumstances of the case and in law, the Ld. AO erred in adding the disallowance u/s 14A or Rs. 40.993/- to the book profit computed u/s 115 JB of the Act.*

*Ground No.8*

Levy of interest under section 234B and 234C of the Act

*The AO erred in levying excess interest under section 234B and 234C of the Act. The appellant prays that the addition be deleted"*

**11.** With regard to Ground No. 1 which is in respect reference to Transfer Pricing Officer u/s. 92CA(2) of the Act on issue of Commission & incentive paid to Ayurveda Agencies, Ld. AR of the assessee submitted that the issue may be remitted to the file of the Assessing Officer for

examining afresh. Ld.DR has not raised any objection to the submission of the Ld. AR.

**12.** After considering both the parties and grounds of appeal, we remit this issue back to the file of the Assessing Officer for limited purpose of examining only this issue. We order accordingly.

**13.** With regard to Ground No. 2 which is in respect of reference to disallowance of Commission & incentive paid to related entity (Ayurveda Agencies), this ground is similar to Ground No. 3 of grounds of appeal raised for the A.Y. 2012-13 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2014-15 also. We order accordingly.

**14.** With regard to Ground No. 3 which is in respect recomputation of deduction claimed u/s. 80-IB and 80-IC of the Act, this ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2012-13 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2014-15 also. We order accordingly.

**15.** With regard to other grounds of appeal i.e. 5 ,6, 7 & 8 there was no submissions made on the grounds, accordingly, grounds raised by the revenue are dismissed. In the result, findings of the Ld.CIT(A) are accepted.

**16.** In the result, appeals filed by the revenue for the A.Y. 2012-13 and 2013-14 are dismissed and appeal for the A.Y. 2014-15 is allowed for statistical purpose.

Order pronounced in the open court on 29.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 29.04.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**