

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.884/M/2020
Assessment Year: 2009-10**

Asst. Commissioner of Income Tax (LTU)-1, 29 th Floor, Center-1, World Trade Center, Cuffe Parade, Mumbai – 400 005	Vs.	M/s. Glenmark Pharmaceuticals Ltd., Glenmark House, HDO Corporate Building, Wing A, B.D. Sawant Marg, Chakla, Opp. Western Express Highway, Andheri (East), Mumbai – 400 099 PAN: AAACG2207L
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Anuj Kisnadwala, A.R.
Revenue by : Shri Hoshang B. Irani, D.R.

Date of Hearing : 16 . 02 . 2022
Date of Pronouncement : 29 . 04 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, Asst. Commissioner of Income Tax (LTU), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 22.11.2019 passed by Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2009-10 on the grounds inter alia that :-

“1. Whether in the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in admitting "he additional evidences submitted during the appellate proceedings without assigning any reason r the same and rebutting the objections raised by the AO in his remand report ?

2. Whether, on the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in holding that no apportionment of R&D expenses to Baddi unit is required for computing deduction u/s 80IC of the Income-tax Act, 1961?

3. Whether in the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in relying on the decision of the Hon'ble jurisdictional High Court in the case of Zandu Pharmaceuticals Works Ltd. (350ITR 366) ignoring the fact that in the said case, each unit of the appellant had a separate R&D unit, whereas in the assessee's case the Baddi unit of the assessee company doesn't have its own independent R&D unit and the entire R&D related work is instead undertaken centrally from their two R&D units situated independently ?”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is into the business of manufacturing and marketing pharmaceutical products and the related R&D activities. The assessee filed return of income for the year under consideration declaring total income at Rs.3,28,68,36,540/- (after claiming deduction of Rs.97,06,74,306/- under section 80C) and book profit under section 115JB of the Income Tax Act, 1961 (for short ‘the Act’) at Rs.2,38,55,12,770/-. Original assessment was framed under section 143 of the Act at the total income of Rs.35,06,06,77,780/- under normal provisions of

the Act and book profit at Rs.2,41,55,12,770/- under section 115JB of the Act. The assessee carried the matter before the Ld. CIT(A) who has decided the issue against the assessee. Feeling aggrieved with the order passed by the Ld. CIT(A), cross appeals have been filed by both the assessee as well as the Revenue on various issues including issue as to whether R&D expenses need to be allocated to unit claiming deduction under section 80IC of the Act.

3. This is second round of litigation as in the earlier round Tribunal has remanded the case back to Assessing Officer (for short 'the AO') vide order dated 27.02.2015 passed in ITA No.101/M/2013 for A.Y. 2009-10 to decide the issue as to the Research & Development (R&D) expenditure by giving directions as under:

“Decide the issue of allocation of R&D expenditure after giving specific finding whether any part of such expenditure has any direct nexus to the Baddi Unit and then decide the issue in the light of judgment of Hon’ble Bombay High Court in the case of Zandu Pharmaceuticals Works Ltd. vs. CIT (350 ITR 366)”

4. Tribunal, however, remitted the case back to the AO to return the definite findings of the fact “as to whether any part of such R&D expenditure has direct nexus to the Baddi units and then decide the issue in the light of the judgment of Hon’ble Bombay

High Court rendered in the case of Zandu Pharmaceutical Works (2012) 350 ITR 366” by returning the following findings:

“4.1 The authorities below have not given a clear finding as to how any part of the R&D expenditure incurred by the assessee has direct nexus to Baddi unit and consequently the same is required to be allocated to the said unit for the purpose of computing deduction u/s 80IC. Accordingly, in the facts and circumstances of the case, we set aside this issue of allocation of R&D Expenses to Baddi unit for computation of deduction u/s 80IC to the record of Assessing Officer for giving a definite finding of fact as whether any part of such expenditure has direct nexus to the Baddi unit and then decide the issue in the light of judgment of Hon'ble High Court in the case of Zandu Pharmaceutical Works Ltd. Vs. CIT (supra). Before parting with the issue, we may clarify that the assessee has raised another issue regarding the mistake in the amount of disallowance as directed by the CIT(A) while enhancing the total income, however, since we have already set aside that part of the CIT(A) order withdrawing the weighted deduction u/s 35(2AB), therefore, the issue regarding mistake in the amount becomes infructuous.”

5. Then AO passed an order under section 143(3) read with section 254 of the Act by holding that the R&D expenses are allocated to Baddi unit No.1. Then assessee again carried the matter before the Ld. CIT(A) who has decided the issue in favour of the assessee by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. In the backdrop of the aforesaid facts and circumstances of the case and grounds raised by the Revenue the sole question raises for determination in this case is :

“As to whether the Ld. CIT(A) has erred in holding that no R&D expenses incurred at Mahape and Sinnar units of the assessee, is to be allocated to the profits derived at/from the eligible industrial undertaking/independent unit at Baddi for calculating the deduction under section 80IC of the Act for the Baddi unit?”

8. Ld. D.R. for the Revenue challenging the impugned order passed by the Ld. CIT(A) relied upon the order passed by the AO by contending inter alia; that findings returned by the Ld. CIT(A) in para 6.3 of the impugned order are without any evidence; that in the return of income assessee had allocated the R&D expenditure to Baddi unit-1 in the sales ratio but subsequently during the assessment/appellate proceedings, the assessee submitted that R&D expenses are not allocable to the Baddi -1 which is eligible for profit linked deductions under section 80IC of the Act.

9. However, on the other hand, the Ld. A.R. for the assessee to repel the arguments addressed by the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A) by contending inter alia that R&D expenses incurred by the assessee at approved center at Mahape and Sinnar units had no connection or nexus with any pharmaceutical products manufactured at Baddi unit; that there is a gestation period of 10-14 years before any commercialization of product is achieved or even after lapse of such period there can be no commercial production and at the same time there was no R&D activities in Baddi unit; that the profits derived by the assessee from Baddi unit only, exclusively on standalone basis to be computed qua the deduction under section 80IC of Baddi unit; that during the remand proceedings the assessee has brought on record comprehensive list of products manufactured at Baddi unit out of which none of the R&D activities are being carried out at Mahape and Sinnar units; that in A.Y. 2010-11 & 2013-14 similar allocation by the AO of R&D expenses to Baddi unit for computing deduction under section 80IC of the Act were deleted by Ld. CIT(A) and relied upon the decisions rendered by Hon'ble Bombay High Court in case of Zandu Pharmaceutical Works (2012) 350 ITR 366 and the decision rendered by Hon'ble Madras High Court in case of Bush Boake Allen (India) Ltd. vs. ACIT (2005) 272 ITR 152.

10. The Ld. CIT(A) decided the issue in favour of the assessee by returning following findings:

“6. I have carefully considered the facts of the case, AO's contentions, remand report as well as appellant's submissions. I find that the AO in his Remand Report between para 5 and 5.5, has stated to have perused through and examined the specific list of the products manufactured in Baddi Unit during the relevant period. In the remand report at para 5.2 the AO clearly stated that all the documents submitted by the appellant were carefully perused by him. It is obvious therefore, that all the additional evidences / documents stand examined by him during the remand proceedings. Further, in the remand report at para 5.3 the AO has further stated that the R&D expenses were incurred by the appellant only at Mahape and Sinnar Units. As per appellant's contention, none of these R&D expenses had any connection or nexus with any pharmaceutical products manufactured at Baddi unit. In the remand report the AO has also commented on the appellant's contention that there is a gestation period of 10-14 years before any commercialization of product is achieved or even after lapse of such period there can still be no commercial production. It is not in dispute that there was no R & D activity in Baddi unit, since actually there was none.

6.1. The Hon'ble Bombay High Court in case of Zandu Pharmaceuticals Works Limited vs. CIT (2012) 80 DTR 322 has stated that the profits derived from the eligible unit only, exclusively, on stand-alone basis, has to be taken into consideration for computing the deduction u/s 801C. The AO has in the Remand Report not been able to put forward any contra evidence to establish any direct nexus of R & D expense of some other units with the manufacturing unit at Baddi, or to rebut the appellant's contentions.

6.2. The table at para 5.3 above shows the exhaustive list of all the products manufactured in and sold from the Baddi Unit (claiming benefit u/s 801C of the Act) along with the sales revenue and its specification. The evidence contains data on the projects ongoing or newly undertaken by the

assessee throughout the year. The same have been furnished for 3 assessment years i.e. A.Y. 2007-08, A.Y. 2008-09 and A.Y. 2009-10.

6.3. Thus, the above confirms that the R&D expenses incurred at Mahape and Sinnar units have no nexus with the Baddi unit since the products manufactured at Baddi are different. The appellant, in the paper book, has filed the details of every product at Baddi in the form of annexures to prove its point.

6.4. Further the pharmaceutical products that were actually manufactured and sold from the Baddi Unit during A.Y. 2009-10 were diligently perused. From the records, it is observed that none of the products for which research and development activities were carried on by the assessee, in its R&D facility located at Mahape & Sinnar in the A.Y. 2009-10 have materialized into commercial production of pharmaceutical products at the Baddi Unit claiming benefit u/s 80IC of the Act.

6.5. There is no direct nexus which is a requirement for bringing into the purview of "derived from" the expenditure on R & D activities carried out at Mahape and Sinnar units on one hand & manufacturing operation at Baddi unit on the other. The case of Zandu Pharmaceutical Works Ltd vs. CIT squarely applies to the appellant's case. Therefore, any apportionment of R&D expenses by the AO to Baddi unit is not correct.

6.6. in view of the above facts and legal considerations, especially the Jurisdictional High Court order in case of Zandu Pharmaceuticals, the specific guideline to the AO by the IT AT, and the AO's remand report on evidences furnished by the appellant, it is safely deduced and held that no R & D expenses (incurred at Mahape and Sinnar) is to be allocated to the profits derived at / from the eligible industrial undertaking the independent unit (at Baddi), for calculating the deduction u/s 80IC for Baddi unit, and thus the AO is directed to do the needful accordingly.

6.7. Further, in A.Y 2010-11 & 2013-14, on merits, similar allocation by AO of R & D expenses to Baddi unit, for computing deduction u/s 80 IC. were deleted by the CIT (A)

and therefore, respectfully following the same, and in accordance with the Hon'ble ITAT direction, I hereby direct the AO not to allocate any R&D expense of Mahape and Sinnar units to the Baddi unit for computing the deduction u/s 80 1C for Baddi 1 (manufacturing) unit, since no nexus is proved.”

11. We have perused the impugned order passed by the Ld. CIT(A) in the light of the decision rendered by Hon'ble Bombay High Court in case of Zandu Pharmaceutical Works (supra) and Hon'ble Madras High Court in case of Bush Boake Allen (India) Ltd. vs. ACIT (supra) on the identical issue as well as in the light of the decision rendered by co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2010-11 and 2013-14 qua the identical issue.

12. Hon'ble Bombay High Court in case of Zandu Pharmaceutical Works (supra) has decided the identical issue as to how and under what circumstances how the R&D expenses are to be apportioned to the assessee having multiple manufacturing units by returning following findings:

Held, allowing the appeal, that the assessee had not established any co-relation or connection between the activities of any of the units with the research and development work carried on in the head office. It was not the assessee's case that any of the units had benefited by the research and development activities pertaining to the new drugs or had utilized the resultant benefit thereof, if any, in any manner whatsoever. It was not the assessee's case that the existing activities of any of the units in fact benefited from or could benefit from the research and

development activities. Each of the units manufactured different items and, therefore, also carried out independent research and development work. The research and development activities were in relation to the new drugs. There was nothing to indicate that in the event of the assessee deciding to commercially exploit the benefits of the research and development work, the products would be manufactured by the units. The expenses could not be apportioned to the units.”

13. Identical issue has been decided by the Hon’ble Madras High Court in case of Bush Boake Allen (India) Ltd. vs. ACIT (supra) by returning following findings:

“Held, that for the purpose of determining as to whether at all there was research and development undertaken regarding the product manufactured in the Chittoor unit, the matter was remitted to the Tribunal. If it did pertain to the product manufactured at Chittoor, only then would the allocation of the expense to the Chittoor unit be justified.”

14. Ratio of the judgment of Hon’ble Bombay High Court in case of Zandu Pharmaceutical Works (supra) and Hon’ble Madras High Court in case of Bush Boake Allen (India) Ltd. vs. ACIT (supra) is the R&D expenses could be apportioned to the units in the event of assessee deciding to commercially exploit the benefits of the research and development work qua the products being manufactured by the units. In other words when research and development carried out at one unit having nothing to do with another unit manufacturing different products allocating the expenses to other unit would not be justified.

15. Now in case at hand it is undisputed fact on record that the assessee is having six units and deduction under section 80IC of the Act is being claimed qua one unit only namely Baddi unit No.1 and the assessee company is having two approved R&D facilities one at Mahape and another one at Sinnar. At the same time, it is also undisputed fact on record that the assessee does not have any R&D centers at Baddi.

16. During the remand proceedings the assessee has brought on record list of top products manufactured and sold from Baddi during the year under assessment which are as under:

<i>Product Description</i>	<i>Sales Amount</i>	<i>Product Description</i>	<i>Sales Amount</i>
<i>GLEVO-500 TABLETS S'S IN</i>	<i>3,31,46,637</i>	<i>CANDIDERMA + CREAM 5 GM IN</i>	<i>1,85,52,477</i>
<i>LIZOLID TABLETS 600MG 4'S (CRITICA)</i>	<i>1,63,55,125</i>	<i>GLIMULIN-MF TABLETS 10'S IN</i>	<i>1,81,89,953</i>
<i>TELMA - H TABLETS 10'S IN</i>	<i>1,60,28,929</i>	<i>ROSICON 2 MG TABLETS 10'S IN</i>	<i>1,80,31,506</i>
<i>CANDIDERMA + CREAM 5 GM</i>	<i>1,29,70,406</i>	<i>RAZEL 10 MG TABLETS 10'S IN</i>	<i>1,73,01,126</i>
<i>ALEX+ SYRUP 50ML SALE</i>	<i>1,01,19,842</i>	<i>CANDID V6 MUCOADHESIVE TAB 6'S</i>	<i>1,65,59,326</i>
<i>ASCORIL + EXPECTORANT 100 ML IN</i>	<i>19,86,63,866</i>	<i>BLOCK - TELMA - R 5 MG TABLETS 10'S IN</i>	<i>1,65,10,165</i>
<i>BLOCK - TELMA - H TABS IN 10'S - SALE</i>	<i>12,77,04,042</i>	<i>GLIMULIN 2 TABLETS 10'S IN</i>	<i>1,61,63,185</i>
<i>ASCORIL + EXPECTORANT 100 ML</i>	<i>11,62,49,836</i>	<i>AZIFINE 500 MG TABLETS 3'S IN</i>	<i>1,57,60,774</i>

<i>CANDID B CREAM 15GM IN</i>	<i>8,45,07,533</i>	<i>CANDIDERMA + CREAM 15 GM</i>	<i>1,56,40,930</i>
<i>LIZOLID 600 MG TABLETS 4'S IN</i>	<i>7,59,60,227</i>	<i>GLEVO-500 TABLETS 5'S</i>	<i>1,54,55,089</i>
<i>FLEXILOR 8 TABLETS 10'S IN</i>	<i>6,15,77,160</i>	<i>EBOV 90 TABLETS 10'S IN</i>	<i>1,54,25,484</i>
<i>ALEX+ SYRUP 100ML IN</i>	<i>5,98,75,778</i>	<i>MUMPER F TABLETS 30'S IN</i>	<i>1,50,43,252</i>
<i>ALEX + SYRUP 50MLIN</i>	<i>5,93,63,214</i>	<i>GLEVO-750 TABLETS 10'S IN</i>	<i>1,49,17,575</i>
<i>ALEX - P + SYRUP 60ML IN</i>	<i>5,10,92,589</i>	<i>AZIFINE 250 MG TABLETS 6'S IN</i>	<i>1,46,80,083</i>
<i>MOM ATE CREAM 15GMIN</i>	<i>4,25,98,129</i>	<i>MOMATE CREAM 15 GM</i>	<i>1,40,14,987</i>
<i>ALEX + SYRUP SF 50ML IN</i>	<i>3,88,00,087</i>	<i>RELCER GEL 180ML ESIN</i>	<i>1,38,15,055</i>
<i>CANDID B LOTION 15 ML IN</i>	<i>3,86,98,674</i>	<i>STILOZ - 50 TABLETS 10'S IN</i>	<i>1,30,91,567</i>
<i>LRN8TABS 10' SALE</i>	<i>3,78,24,862</i>	<i>ROSICON 4 MG TABLETS 10'S IN</i>	<i>1,29,97,341</i>
<i>DIZIRON TABLETS 20'S IN</i>	<i>3,53,02,776</i>	<i>TELMA TABS IN 80MG 10'S - SALE</i>	<i>1,28,15,218</i>
<i>GEMEZ 320MG TABS IN 320MG S'S - SALE</i>	<i>3,51,15,227</i>	<i>FLUCORT N SKIN CREAM 20GM IN</i>	<i>1,27,20,615</i>
<i>GLEVO-500 TABLETS S'S IN(BLOCK)</i>	<i>3,43,82,068</i>	<i>DIZIRON TABLETS 10'S</i>	<i>1,23,38,232</i>
<i>CANDID B CREAM 5 GM IN</i>	<i>3,40,22,796</i>	<i>ASCORIL + TABLETS 10'S IN</i>	<i>1,22,12,299</i>
<i>CANDID V6 MUCOADHESIVE TABLETS S'S IN</i>	<i>3,39,04,883</i>	<i>MOMATE OINTMENT 15 GM IN</i>	<i>1,18,10,168</i>
<i>ASCORIL D+ SYRUP 100 ML IN</i>	<i>3,25,29,513</i>	<i>MACLAR 250 TABLETS 4'S IN</i>	<i>1,17,22,912</i>
<i>TELMA - H TABLETS 10'S SALE</i>	<i>2,77,76,968</i>	<i>MOMATE S OINTMENT 10 GM IN</i>	<i>1,16,71,012</i>
<i>ROSICON-MF TABLETS 10'S IN</i>	<i>2,70,00,882</i>	<i>TELMA 80 H TABLETS 10'S IN</i>	<i>1,16,43,270</i>
<i>STILOZ - 100 TABLETS 10'S IN</i>	<i>2,68,34,629</i>	<i>GLUCAR 25 TABLETS 10'S IN</i>	<i>1,14,10,285</i>

CANDIDERMA + CREAM 15 GM IN	2,57,59,315	FLEXILOR 4 TABLETS 10'S IN	1,13,76,836
MIGNAR 50 MG TABLETS 10'S IN	2,49,72,998	GLUCAR 50 TABLET 10'S IN	1,13,42,387
MIGNAR 25 MG TABLETS 10'S IN	2,48,33,869	FLUCORT SKIN CREAM 20GM IN	1,13,33,792
APRECAP CAPS TRIPK-1'S 125MG 2'S 80MG IN	2,43,32,530	MIGNAR 25 MG TABLETS 10'S	1,12,42,200
TELMA AM TABS IN 10'S - SALE	2,35,09,049	CANDID V3 TABLETS IN	1,11,80,932
TELMA - 40 TABS IN 10'S - SALE	2,20,51,708	LRN4 TABS 10' SIN	1,11,11,333
ASCORIL D+ SYRUP 100 ML	2,12,27,816	EBOV 120 TABLETS 10'S IN	1,09,07,672
OFLOMIL 200 MG TABLETS 10'S IN	2,09,68,369	DUOLAXIN LAXATIVE 200ML IN	1,05,61,558
MOMATE CREAM 5 GM IN	2,00,22,558	FLUCORT C SKIN CREAM 20GM IN	1,05,07,114
GL/MULIN 2MF TABLETS 10'S IN	1,99,66,292	HALOVATE CREAM 30GM IN,	1,04,59,863
CANDID B CREAM 15GM	1,95,84,711	ES0Z 40 TABS IN 15'S - SALE (BLOCK)	1,01,56,841
MILIVO 500 TABLETS S'S IN	1,93,58,480	MILICAL TABLETS 15'S IN	1,01,11,321
FLUCORTH SKIN CREAM 20GM IN	1,93,22,417	Total	2,19,38,37,748
MUCARYL- AX EXPECTORANT 100ML IN	1,87,35,221		

17. The Ld. CIT(A) has returned factual finding that no R&D activities have been carried out by the assessee company in its Mahape and Sinnar R&D facilities qua the products/drugs manufactured by the assessee company on its Baddi units during the year under assessment.

18. Furthermore, in the subsequent assessment years 2010-11 to 2013-14 identical issue has been decided by the Revenue in favour of the assessee by holding that R&D expenses incurred by the assessee company at Mahape and Sinnar units are not allocable to Baddi unit as there is no direct nexus between the R&D activities carried out and product manufactured by the assessee company at Baddi unit 1.

19. Even the AO in his remand report discussed by the Ld. CIT(A) in para 5.1 of the impugned order categorically mentioned that the assessee's "list of products manufactured at Baddi plant during the year under assessment show that the R&D expenses incurred at approved R&D centers situated at Mahape and Sinnar pertain to different products and not to the ones being manufactured at Baddi unit". This contention of the assessee has not been controverted by bringing on record any fact or evidence by the AO by filing any counter reply. Rather the AO has mentioned in its remand report that he has perused all the documents submitted by the assessee carefully.

18. Even otherwise one more fact has been brought on record by the assessee company that there is a gestation period of 10/14 years before any commercialization of product is achieved or even after

lapse of such period there can still be no commercial production. But at the same time it is admitted fact that none of the products being manufactured by the assessee company at Baddi units has any nexus with the R&D activities being carried out at Mahape and Sinnar units. So we are of the considered view that when there is no direct nexus between the expenditure incurred on R&D activities by the assessee company at its Mahape and Sinnar units and manufacturing activity at the Baddi Units are not sustainable in the eyes of law.

19. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has returned the findings on facts in the light of the decisions rendered by Hon'ble Bombay High Court in case of Zandu Pharmaceutical Works (supra) and Hon'ble Madras High Court in case of Bush Boake Allen (India) Ltd. vs. ACIT (supra). So we find no ground to interfere into the impugned order passed by the Ld. CIT(A). Resultantly, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29.04.2022.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 29.04.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.